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The American Bar Association Journal

ISSUED QUARTERLY

BY THE AMERICAN BAR ASSOCIATION

CONTENTS

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Letters as to other business relating to the JOURNAL should be addressed to the office of publication; those as to the Bureau of Comparative Law to Robert P. Shick, Franklin Bank Building, Philadelphia, Pa.; and those as to the general plan and literary contents of the JOURNAL to the Chairman of the Committee on publications, Carroll T. Bond, Baltimore, Md.

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Leading Articles

VOL. XXVII JANUARY, 1918 NO. 3

IMPORTANT "COMMENTS" IN RECENT ISSUES

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ARRANGEMENT OF RESPECTIVE SUB-TITLES UNDER HEADINGS D AND E IN TABLE OF CONTENTS ON COVER PAGE

Statement of the Ownership, Management, Circulation, Etc., required by the Act of Congress of August 24, 1912,

of THE AMERICAN BAR ASSOCIATION JOURNAL, published quarterly at Baltimore, Maryland, for April 1st, 1918.

STATE OF MARYLAND, BALTIMORE CITY, *SS.*

Before me, a Notary Public in and for the State and City aforesaid, personally appeared George Whitelock, who, having been duly sworn according to law, deposes and says that he is the managing editor of the American Bar Association Journal and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher, THE AMERICAN BAR ASSOCIATION, Baltimore, Md.
Editor, Hon. Carroll T. Bond, Court House, Baltimore, Md.
Managing Editor, George Whitelock, Secretary, 1416 Munsey Bldg., Baltimore, Md.
Business Managers, Executive Committee American Bar Association, as follows:

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THE AMERICAN BAR ASSOCIATION

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent. or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state).

NONE.

GEORGE WHITELOCK, *Secretary.*

Sworn to and subscribed before me this 13th day of March, 1918.

[SEAL] NELLIE A. DAVIDSON.

(My commission expires May 1st, 1918.)

The American Bar Association Journal

VOL. IV April, 1918 No. 2

I.

SPECIAL ANNOUNCEMENTS.

ANNUAL MEETING.

The annual meeting of the American Bar Association will be held at **Cleveland, Ohio,** on Wednesday, Thursday and Friday, August 28, 29, 30, 1918.

The offices of the Secr tary and Treasurer will be located in the **Hotel Winton** (south end of the Mezzanine). The offices will be open for registration of members and delegates and for sale of dinner tickets, on Monday morning, August 26, at 10 o'clock.

The business sessions of the Association will be held and the formal addresses before it will be delivered in the Assembly Hall, **Hotel Winton.**

FIRST SESSION: WEDNESDAY, AUGUST 28, 10 A. M.
Address of welcome by Andrew Squire, of Ohio.
Walter George Smith, of Pennsylvania, President of the Association, will deliver the President's address.

SECOND SESSION: WEDNESDAY, AUGUST 28, 8 P. M.
Hon. John H. Clarke, Associate Justice of the Supreme Court of the United States, will deliver an address.

RECEPTION.

A reception will be given to the members and guests of the Association and ladies accompanying them, on Wednesday, August 28, at 9.30 P. M., in the Assembly Hall, **Hotel Winton.**

THIRD SESSION: THURSDAY, AUGUST 29, 10 A. M.

The reports of standing and special committees will be presented and discussed.

They will be printed in the July number of the JOURNAL.

FOURTH SESSION: THURSDAY, AUGUST 29, 8 P. M.

Dr. T. Miyaoka, of Tokyo, Japan, will deliver an address.

FIFTH SESSION: FRIDAY, AUGUST 30, 10 A. M.

Hampton L. Carson, of Pennsylvania, will deliver an address, "Heralds of World Democracy—The English and American Revolutions."

Reports of committees not previously disposed of will be presented and discussed.

SIXTH SESSION: FRIDAY, AUGUST 30, 2.30 P. M.

Unfinished business.

Election of officers.

ANNUAL DINNER.

The annual dinner of the Association will be given in the **Hotel Winton**, on Friday, August 30, 7 P. M.

EXECUTIVE COMMITTEE AND GENERAL COUNCIL.

The Executive Committee of the Association will meet on Tuesday, August 27, 8 P. M., in Room D, Mezzanine, **Hotel Winton.**

The General Council of the Association will meet in Room A, Mezzanine, **Hotel Statler.**

The first meeting of the Council will be held on Wednesday, August 28, 9 A. M.

SECTIONS, AFFILIATED BODIES, ETC.

The National Conference of Commissioners on Uniform State Laws will convene on Thursday, August 22, 11 A. M., in the U. S. District Court, East Room, Federal Building.

The sessions of the Conference will continue on Friday, Saturday, Monday and Tuesday, August 23, 24, 26, 27.

The Executive Committee of the Conference will meet on Thursday, August 22, 10 A. M., in the U. S. District Court, West Room, Federal Building.

The American Institute of Criminal Law and Criminology will meet in the Lattice Room, **Hotel Statler,** on Monday, August 26. There will be three sessions of the Institute, 10 A. M., 2.30 P. M. and 8.30 P. M., respectively.

The Section of Public Utility Law will hold three sessions: on Monday, August 26, 2 P. M., and on Tuesday, August 27, 10 A. M. and 2 P. M.

The sessions will be held in the Assembly Hall, **Hotel Statler.**

The Special Conference of Representatives of Bar Associations will meet on Tuesday, August 27. There will be three sessions of the Conference, 10 A. M., 2 P. M. and 8 P. M., respectively.

The sessions will be held in the Assembly Hall, **Hotel Winton.**

It is the purpose of the Committee in charge of the program for this Conference to invite thereto three delegates from each State Bar Association and two delegates from each Local Bar Association. The full program will be printed in the July JOURNAL.

The Comparative Law Bureau will hold its session on Tuesday, August 27, 2 P. M., in the Lattice Room, **Hotel Statler.**

The Section of Legal Education will hold its sessions in Room A, Mezzanine, **Hotel Statler.** There will be two sessions of the Section on Tuesday, August 27, 3 P. M. and 8 P. M. A third session will be held on Wednesday, August 28, 3 P. M.

The Judicial Section will hold its session on Wednesday, August 28, 2 P. M., in the Assembly Hall, **Hotel Winton.**

The Section of Patent, Trade-Mark and Copyright Law will meet on Wednesday, August 28, 3 P. M., in the Lattice Room, **Hotel Statler.**

CHRONOLOGICAL RÉSUMÉ.

AUGUST.

THURSDAY, 22D.

10.00 A. M. Executive Committee of the National Conference of Commissioners on Uniform State Laws.
11.00 A. M. Opening Session Conference Commissioners.

FRIDAY, SATURDAY, 23D, 24TH.

National Conference of Commissioners on Uniform State Laws.

MONDAY, 26TH.

10.00 A. M. National Conference of Commissioners on Uniform State Laws.
10.00 A. M. American Institute of Criminal Law and Criminology.
2.00 P. M. National Conference of Commissioners on Uniform State Laws.
2.00 P. M. Section of Public Utility Law.
2.30 P. M. American Institute of Criminal Law and Criminology.
8.00 P. M. National Conference of Commissioners on Uniform State Laws.
8.30 P. M. American Institute of Criminal Law and Criminology.

TUESDAY, 27TH.

10.00 A. M. Closing Session of National Conference of Commissioners on Uniform State Laws.
10.00 A. M. Special Conference of representatives of American Bar Association, and delegates from state and local bar associations.
10.00 A. M. Section of Public Utility Law.
2.00 P. M. Special Conference of Bar Association Delegates.
2.00 P. M. Comparative Law Bureau.
2.00 P. M. Section of Public Utility Law.
3.00 P. M. Section of Legal Education.
8.00 P. M. Special Conference of Bar Association Delegates.
8.00 P. M. Section of Legal Education.
8.00 P. M. Executive Committee of the Association.

WEDNESDAY, 28TH.

9.00 A. M. General Council of the Association.
10.00 A. M. **First Session** American Bar Association.
Address of welcome.
President's address.
2.00 P. M. Judicial Section.
3.00 P. M. Section of Legal Education.
3.00 P. M. Section of Patent Law.
8.00 P. M. **Second Session** American Bar Association.
Address, Hon. John H. Clarke, Associate Justice of the Supreme Court of the United States.
9.30 P. M. Reception to members and guests.

THURSDAY, 29TH.

10.00 A. M. **Third Session** American Bar Association.
Committee reports.
P. M. Excursion.
8.00 P. M. **Fourth Session** American Bar Association.
Address, Dr. T. Miyaoka, of Tokyo, Japan.

FRIDAY, 30TH.

10.00 A. M. **Fifth Session** American Bar Association.
Address, Hampton L. Carson, of Pennsylvania.
2.30 P. M. **Sixth Session** American Bar Association.
Unfinished business.
7.00 P. M. Annual dinner American Bar Association.

HOTEL RESERVATIONS.

Karl Fenning, Citizens Building, Cleveland, Ohio, has kindly consented to take charge of the reservations for members and delegates. In writing to Mr. Fenning, please state preference of hotels, time of arrival, period for which the rooms are desired, whether with or without bath, and how many persons will occupy each room.

A list of available hotels will be found on supplementary page at the back of this JOURNAL.

SPECIAL NOTICE TO CHAIRMEN OF COMMITTEES.

All printed reports of committees of the American Bar Association for presentation at the annual meeting will be published in the July number of the JOURNAL, and such reports will *not* be printed and distributed to members in separate pamphlets. The Secretary should receive reports from the respective committees in final form not later than June 15, 1918. *Chairmen of committees are requested to bear this notice in mind.*

Rooms at the **Hotels Winton** and **Statler** are available for purposes of Committee meetings, and will be assigned on application of Chairmen to the Secretary.

GEORGE WHITELOCK, *Secretary,*
1416 Munsey Bldg., Baltimore, Md.

II.

GENERAL ANNOUNCEMENTS.

ADDRESSES AT ANNUAL MEETING.

Invitations to deliver addresses before the next annual meeting in Cleveland, Ohio, have been extended by the Executive Committee to Hon. John Hessin Clarke, Associate Justice of the Supreme Court of the United States, Hampton L. Carson of Pennsylvania, and Dr. T. Miyaoka, a leader of the bar of Tokyo, Japan, all of whom have accepted.

Justice Clarke is the youngest in commission of the Justices of the Supreme Court of the United States (October 9, 1916). Cleveland is his home city. He is the Circuit Justice assigned to the Seventh Circuit.

Hampton L. Carson, the author of the Biography of the United States Supreme Court, has been long eminent at the bar of his state. He has been active in the Association since 1890.

Dr. Miyaoka was born at Osaka, Japan, in 1865. He graduated with honors in law from the Tokyo Imperial University in 1887, and in the same year entered the diplomatic service, was commissioned as Attaché of Legation and assigned to the Law Bureau of the Department of Foreign Affairs. Two years later he became Secretary of Legation and Junior Counselor of the Department in which capacity he served until 1892, when he became Chargé d'Affaires of the Embassy at Washington. He served in that office two years. From 1894 to 1900 he was First Secretary of Legation at Berlin, part of the time as Chargé d'Affaires. From 1900 to 1906 he was Minister Resident and Senior Counselor of the Department of Foreign Affairs of Japan. He represented the Japanese Government before the International Arbitral Tribunal at the Hague in 1904 and 1905; was Counselor of the Embassy at Washington with the rank of Minister Plenipotentiary from 1906 to 1908, and President of the Japanese Commission at the International Opium Conference in 1909. In 1909 he resigned office to take up the general practice of the law.

The invitation of the Association to Dr. Miyaoka was extended through the Hon. Roland S. Morris, United States Ambassador to Japan. In his reply to Ambassador Morris, Dr. Miyaoka writes:

"Knowing as I do the brilliant array of distinguished jurists and statesmen who have been honored in the years past by similar invitations from that powerful body of lawyers, I am sensible of the great honor which this invitation carries with it. The fact that Your Excellency is the medium through which the invitation has been extended to me adds further lustre to a distinction which is in itself a most precious one. I accept the invitation with the greatest pleasure and beg to be permitted to add that I feel the present to be one of the proudest moments of my life."

Dr. Miyaoka plans to come to America in the early summer, and to make excursions to various cities before the meeting of the Association. He will probably return to Japan immediately after the meeting.

MEETINGS OF STATE BAR ASSOCIATIONS IN 1918.

THE LOUISIANA BAR ASSOCIATION will hold its meeting on April 19, 20, at New Orleans. Hamilton Lewis of Illinois will deliver an address.

THE MISSISSIPPI STATE BAR ASSOCIATION will meet on Wednesday, May 1, at Jacksonville.

THE BAR ASSOCIATION OF HAWAII will hold its annual meeting on May 29 at Honolulu.

THE BAR ASSOCIATION OF ARKANSAS will meet on May 29 and 30 at Little Rock.

THE ILLINOIS STATE BAR ASSOCIATION will meet on May 31 and June 1 at La Salle Hotel, Chicago.

THE GEORGIA BAR ASSOCIATION will meet on June 7 and 8 at Tybee Island.

THE NEW JERSEY STATE BAR ASSOCIATION will meet on June 14 and 15 at the Hotel Chelsea, Atlantic City.

THE SOUTH DAKOTA BAR ASSOCIATION will meet on June 19 and 20 at Sioux Falls.

THE PENNSYLVANIA BAR ASSOCIATION will hold its meeting on June 25, 26 and 27 at Bedford Springs.

THE NORTH CAROLINA BAR ASSOCIATION will convene on June 25, 26 and 27 at Wrightsville Beach.

THE STATE BAR ASSOCIATION OF WISCONSIN will hold its next meeting in Racine, June 26, 27 and 28. Moorfield Storey, of Massachusetts, will deliver an address.

THE IOWA STATE BAR ASSOCIATION will hold its annual meeting on June 27 and 28 in Des Moines.

THE MICHIGAN STATE BAR ASSOCIATION will meet during the latter part of June in Kalamazoo.

THE TEXAS BAR ASSOCIATION will hold its meeting on July 4, 5 and 6; the place has not yet been decided upon.

THE BAR ASSOCIATION OF NEW HAMPSHIRE will meet on July 6, at the Crawford House, White Mountains.

THE WEST VIRGINIA BAR ASSOCIATION will meet on July 16 and 17 in Elkins.

THE SOUTH CAROLINA BAR ASSOCIATION will hold its next annual meeting about August 1 in Spartanburg.

THE BAR ASSOCIATION OF TENNESSEE will hold its next meeting on August 7, 8 and 9 in the City of Chattanooga.

THE OHIO STATE BAR ASSOCIATION will hold its annual meeting on August 26 and 27 in Cleveland.

BOOKS RECEIVED.

Acknowledgment is made of the receipt by the Secretary of the following books:

Report of the Librarian of Congress, 1917.

Report of the West Virginia Bar Association Vol. XXXIII (1917).

Proceedings of the Minnesota State Bar Association, Seventeenth Annual Session, 1917.

Report of the Mississippi State Bar Association Vol. XII (1917).

Proceedings of the Twenty-seventh Annual Meeting of the Michigan State Bar Association, 1917.

William Claiborne of Virginia (G. P. Putnam's Sons).

War Administration of the Railways in the United States and Great Britain (Oxford University Press, New York).

Income Tax Law and Accounting, by Godfrey N. Nelson (The Macmillan Company).

Mine Taxation in the United States, by L. E. Young.

Report of the Alabama State Bar Association, Vol. XL, 1917.

Guide to Law of Argentina, Brazil and Chile, by Edwin M. Borchard.

Report of the Twenty-first Annual Meeting of the Indiana State Bar Association, 1917.

Economic Effects of the War Upon Women and Children in Great Britain (Oxford University Press, New York).

Proceedings of the Thirty-eighth Annual Session, Ohio State Bar Association, 1917.

Report of The Latin American Return Visit Committee.

Éléments d'Introduction Générale à l'étude des Sciences Juridiques.

Early Effects of the European War upon the Finance, Commerce and Industry of Chile (L. S. Rowe).

Illinois Law Bulletin (December, 1917; February, 1918).

Back to the Republic (Harry F. Atwood).

III.

THE LIBERTY LOANS.

ADDRESS OF THE SOLICITOR-GENERAL OF THE UNITED STATES,

JOHN W. DAVIS,

OF WEST VIRGINIA.

AT WASHINGTON, D. C., ON OCTOBER 27, 1917, THE LAST DAY FOR SUBSCRIPTIONS TO THE SECOND LIBERTY LOAN.

If this meeting were called for the purpose of inducing subscriptions to the Liberty Loan, it would in my judgment be unnecessary; for, all questions of patriotic duty aside, I cannot believe that any one within the sound of my voice has not already possessed himself according to the limit of his means of the best and safest interest-bearing securities in the world—endorsed by one hundred millions of people and secured by a first mortgage upon half a continent.

It would seem also that if this meeting is held to celebrate the success of the loan it is premature. Not because there is the slighest doubt that this loan will be subscribed and oversubscribed. The American people have made up their minds about that. You may rest assured, Mr. Secretary, that neither this loan nor any of those which will surely follow it runs any risk of failure. But no good general halts his troops to celebrate a victory, no matter how fully assured, until the sun has gone down on the final day of battle.

But there is a service to be performed by this gathering which is neither unnecessary nor premature. The true reason for this vast assemblage is that we may send out from this place a message to our fellow citizens and allies; and a message to our enemy as well. This is a city set upon a hill, whose light cannot be hid. The people of the United States have a right to ask as they put their armor on whether the pulse of the nation's capital beats in unison with their own. Let us make them know that, prompt as they are to answer the call of our great President, we are no less ready; that, firm as they are in their devotion to our cause, we are no less steadfast; and, willing as they are to make sacrifice of their all for justice and for liberty, they shall not outrun us in self-surrender. And to the Kaiser and his minions let the

word be sent that when we authorized our Commander-in-Chief to use against them and their insolent aggresion all the resources of this nation we meant in solemn and in deadly earnest exactly what we said.

When on the first of February last the Imperial German Government declared its intention to enter upon a campaign of unrestricted murder, to deny to American citizens the right to travel in security upon the open seas—the immemorial highway of the nations—and to make indiscriminate war upon all mankind, it turned to us and asked the sneering question: "What are you going to do about it?"

To fully catch the weight and import of that insulting challenge we should remember that we were not the first to whom it had been addressed. It had been flung at tiny Serbia; and that nation of patriots replied by hurling from her soil in ruin and confusion an invading army larger than her own. And when at last, attacked in front and rear, overwhelming numbers drove her soldiers through the icy rigors of the Albanian mountains, they went not in surrender, but only that they might rest and refit themselves and return to the attack once more.

Belgium faced it when in reply to the demand for the surrender of her honor she retorted that "Belgium is a country, not a road"; and she made her answer good with the thunder of her guns at Liege, albeit at the cost of her own martyrdom.

It was the same challenge which was addressed to Russia, and upon hearing it the Great Bear stirred himself and took toll of more than a million and a half of German and Austrian prisoners.

It came to Italy in the form of a demand upon her as a member of the Triple Alliance that she join the Central Empires in their war. But it was the Italy of Victor Emmanuel and Garibaldi, of Mazzini and Cavour, of Magenta and Solferino, which responded: "I became your ally for defense and not for aggression, and in your plans for criminal plunder and rapine I will have no lot or part." And the men who today are performing prodigies of valor upon the roof of the world, among the Alpine snows and glaciers, are the lineal descendants in blood and spirit of the legions who under Cæsar turned back the German hordes and saved the Europe of an earlier day.

German soldiers, drunk with the thought of easy triumph, shouted this challenge as they rushed on Paris. And all the spirit of immortal France breathed itself out in the order of her great field marshal that ushered in the day of the Marne. Can it ever be forgotten? "Soldiers of France," said he, "the moment has arrived! On tomorrow you will advance against the enemy. When you can no longer advance you will hold the ground which you have gained. When you can no longer hold the ground which you have gained you will die upon the spot!"

And, when lost to all sense of honor or of shame, Germany said to that nation which shares not only our language, but our traditions and ideals of liberty as well: "I shall no longer keep the ancient and solemn covenant between us made for Belgium's neutrality; what will you do about it?"—to her lasting glory great England answered: "You may break your pledges as you will; I shall keep mine." And into the scales of justice she flung all the weight of Britain's battleships, five millions of armed men, and guns that "touch limbers from the Somme to the sea."

Because our wrongs, no less intolerable, come later in time than theirs, shall we be less ready to resent them? Shall not we, too, answer like men who are freemen and propose freemen to remain? Shall we not with all our will and all our power make defense to the end against this brutal and bloody assault upon all that we hold most dear?

Ah, when Germany comes to stand at the bar of history, as stand she surely must, to answer for her crimes against mankind, what a cloud of witnesses will confront her in that reckoning! Belgium will tell of her ruined homes and looted cities, her outraged women and her mutilated children. Poland will point to the bones of the starved that whiten all her highways. Serbia from her ashes will cry out in accusation; and the very sea itself will cast up its dead that they may speak in her condemnation. Ours be the task to join with the other free peoples of the world in leading her by force of arms to that solemn judgment bar.

Nor can we forget, my friends, that in this day we, too, are being weighed in the balances of God. I take a hint from you, Mr. Secretary, and recall the words which President Lincoln

addressed to Congress in the fateful year 1862, and which might well have been written of this time. Said he:

"Fellow-citizens, we cannot escape history. We of this Congress and this administration will be remembered in spite of ourselves. No personal significance or insignificance will save the one or the other of us. The fiery trial through which we pass will light us down in honor or dishonor to the latest generation. We shall nobly save or meanly lose the last, best hope on earth."

Shall not we of this later date, with that solemn admonition sounding in our ears, resolve without shrinking to lay all that we have; aye, all that we are, on the altar of human liberty and freedom!

IV.

WAR SERVICE OF THE AMERICAN BAR ASSOCIATION.

REPORT OF SPECIAL COMMITTEE.

A member of the American Bar Association who was in Washington last December was impressed with the number of men who had come there seeking an opportunity to serve their country, but whose search had met with but little or no success. On the other hand, he was impressed with the fact that many of the departments were having difficulty in finding the right men for positions. In a letter to President Wilson it was suggested that so far as lawyers were concerned the situation might be relieved by having the American Bar Association form a committee to find competent lawyers for the departments and bureaus of the government which require their services. In reply to this letter the President wrote that the matter had been taken up informally at Cabinet "and that there was a universal feeling that the suggestion might very profitably indeed be acted upon . . . . in consultation and close co-operation with the Secretary of Labor."

At the meeting of the Executive Committee held in Philadelphia in January, John Lowell, of Boston, was appointed a committee of one to investigate and report on the subject. Mr. Lowell secured Lawrence G. Brooks, also of Boston, to assist him as Secretary of the Special Committee for War Service, as the committee is called, and with him proceeded to make a survey of the situation in Washington.

In accordance with the suggestion of the President, the Secretary of Labor was at once seen and quarters were furnished by him in the Public Service Reserve of his department. Secretary Wilson, Assistant Secretary Post and Mr. Hall of the Public Service Reserve received the committee most cordially, offered the hearty co-operation of the Department of Labor and provided the entire office accommodations and equipment necessary to start the work of the committee.

The committee was installed without delay at 1712 Eye Street, Washington, D. C., in the quarters of the U. S. Public Service

Reserve, which under the charge of Mr. W. E. Hall, of New York, is engaged in enrolling for national service all types of men of the professional and skilled classes, including engineers, architects and lawyers. The wisdom of the President's suggestion soon became apparent, as the committee has virtually taken over and is developing the work of the Reserve so far as it relates to lawyers.

The work of the committee to begin with was: *First,* to find out how great a demand for lawyers existed among the departments, and, *second,* to estimate how many and what lawyers there were available to fill this demand. To do this the committee began to make an analysis of the various activities of the department to determine how many lawyers were serving the government, what kind of work they were doing, how many more lawyers were needed at the moment and what the probable needs of the departments would be.

In several instances valuable suggestions were made to the committee tending to enlarge the scope of its activities, and several specific requests were made for lawyers. These requests came from the Departments of State, Justice, War, Treasury and Labor, from the War Trade Board, Alien Property Custodian, Food and Fuel Administrations, Interstate Commerce Commission and Red Cross. One subsection of the War Department alone wanted 15 lawyers.

As available to fill the positions there was a long list of lawyers who had made application for war service. These applications had been presented to the Public Service Reserve, War Service Exchange, to the Provost Marshal General's office and to various other departments. Through notices given of the committee's activities by the Associated Press and Official Bulletin, many applications were made direct to the committee. All of the applications of lawyers are now being sent or turned over to this committee. The number of lawyers who have already stated their readiness to serve the government exceeds 6000.

A large number of names have been submitted to the departments which have asked for lawyers and many men have been sent to the departments. How many of these have been accepted for positions it is impossible at present to say, as the departments with their numerous other duties have been unable to make a

report thereon. The committee is convinced, however, that enough men have been accepted to justify all its efforts.

To enable the committee to select and furnish men qualified to fill the positions out of the large list of lawyers applying, it has secured names of reliable attorneys throughout the country who can be counted upon to furnish accurate information about any applicant where such information is desired. The committee does not rely upon the recommendations provided by the applicants themselves, but also applies directly to its own selected representatives in the district where the applicant lives, always being careful to secure information from a sufficient variety of sources to insure a fair estimate of the applicant's character and ability. To those bar associations who have written asking in what way they can assist the work of the committee, letters have been written urging them to provide names of able and available lawyers and also to supply information as to others whom the committee may inquire about.

While the immediate and ostensible purpose of the committee is to supply lawyers to the government, it soon discovered that there were other opportunities for service, among them the opportunity to detect unnecessary duplication of effort and assist in its elimination. After consultation with the President and Secretary of the American Bar Association, the work of the committee was enlarged so as to enable it to perform these additional services. Examples of the new work are as follows:

The committee learned through a conference with the Department of Justice of an important project in which that department and the Department of Labor were both interested which was hanging fire because there was no one to push it to completion. The committee offered to assist in the matter. It is probable that as a result a very large sum of money will be saved for the government, a great economic waste will be prevented, and the happiness of many people will be assured.

In another case the committee learned that the Council of National Defense was about to put into execution a most excellent plan but without using therefor certain useful machinery already in existence. The plan involved the establishment of local organizations to advise and assist drafted and enlisted men and their families. Through the joint efforts of the committee

and the Provost Marshal General, the Legal Advisory Boards of which approximately 4600 already existed were utilized in the formation of these organizations. The state representatives of the American Bar Association were then called upon by the Secretary and rendered efficient service with the State Councils of Defense in carrying the plan through.

The committee is making the most of a third opportunity for service which has come to it through learning of the activities of certain claim agents and pension attorneys who in flagrant violation of the spirit of the War Risk Insurance Act are misrepresenting to beneficiaries that the employment of agents and attorneys is necessary before the government will recognize claims. The committee brought this matter to the attention of the War Risk Insurance Bureau which immediately, in co-operation with this committee, drafted an amendment to the present act. Finding that Congressman Treadway was similarly engaged, the committee brought him into relations with the bureau, thereby securing uniformity of action.

Realizing that legislation alone might not remedy the evil and that in any event pending its adoption—wives, mothers and other dependents of men in service would be the prey of claim chasers, the committee wrote to the Secretary of the Treasury offering on the behalf of the American Bar Association to organize the Bar of the country for voluntary service to aid beneficiaries in the preparation and filing of their claims.

The committee then made appeal by letter to the Bar through the chairmen of the Legal Advisory Boards asking them to organize their associates for the double service of aiding the dependents of men at the front and in camp, and of coming to the assistance of the government in time of distress. Enclosed with this letter was an endorsement by Secretary McAdoo, calling upon the Legal Advisory Boards to respond to the appeal of the American Bar Association. Enclosed also was a copy of the War Risk Insurance Act. Finally arrangements were made to inform beneficiaries through the press, the State Councils of Defense, the home service sections of the Red Cross and other appropriate agencies that the gratuitous assistance described was at their disposal.

There are many other opportunities open to the committee, providing it can keep actively enough in touch with the situation. One problem in Washington is so to systematize the work that these opportunities can be surely discovered. A further problem to be solved affecting not only employment of lawyers, but the whole field of skilled and professional service, is to devise some method by which all of the sections of a department shall report its needs of men to some central head. At the present time heads of departments frequently do not know what the needs of their subordinates are. Several sections of a department engaged in similar work may spend much time and effort to get men, none of them knowing of, or profiting by, the experience of other sections. There is now no way of finding out from an authoritative source what the requirements are. This is wasteful of time both for the department and the agency trying to supply the men and is inefficient in its results. This condition, the American Bar Association in co-operation with other agencies in Washington is endeavoring and hoping to remedy.

In short, the experience which the Special Committee on War Service of the American Bar Association has had up to the present time shows a definite demand for the kind of work which the committee was appointed to do, and that the committee can at least partially fill this demand. It further shows that the Association can perform many other services of value to the government.

JOHN LOWELL,
Chairman of Special Committee.

V.

NEW PHASES OF NATIONAL DEVELOPMENT.

ADDRESS OF

CHARLES E. HUGHES,

PRESIDENT OF THE NEW YORK STATE BAR ASSOCIATION,

JANUARY 11, 1918.

In the midst of war, we meet for inspiration and counsel. Outraged beyond endurance by unspeakably brutal assaults, our country has made the irrevocable decision and is assuming its important share of the burden of creating a new international order as the essential basis of a just and enduring peace. We know why we have entered upon this supreme struggle. It is not because we are eager as a people for new international responsibilities; rather, we have been disposed to shrink from them. It is not that we desire extension of power. Intent upon victory, we have no lust for conquest. Nor are we moved by a mere desire to avenge unbearable wrongs and inhumanities. We have entered upon this struggle because it is absolutely essential to our safety that the pretensions of brute force should be defeated; because it is absolutely essential to our independence and progress to remove the ugly menace of an unscrupulous military power seeking to subject free peoples to its demands on land and sea—whenever its towering ambition and growing lust might suggest demands; because America cannot live in peace and security, unless there is firmly established among the nations the Reign of Law. Our thoughts are engrossed with this terrific contest, with war aims—ultimate and immediate, with the long view and the short view, with the groping toward the development of international institutions, with the necessity for swift adjustments to the extraordinary needs of the moment, with transportation plans, financial plans, military plans, with the drafted army and its training camps, with our boys looking with brave eagerness to the Western Front, with the effort to picture the world in which our grandchildren and their descendents will play their part—the inheritors of the fruits of our success or failure, for whom the present opportunity is a sacred trust in our keeping, and for whose freedom from an intolerable tyranny we of

this generation with the faith of our fathers have pledged our lives, our fortunes and our sacred honor.

The Lawyer's Attitude.

As lawyers, we have a peculiar interest in this struggle, for we are not the devotees of an artificial, technical, temporary system, of ceremony and mystery, but the liegemen of the law which embodies the dictates of reason and expresses the sense of justice in determining rights and obligations both within and among states. As lawyers, we find it difficult to turn from the immediate problems connected with the war to the subjects which ordinarily engage our attention at these annual meetings. Matters of the most serious professional importance in days of peace seem now to be remote and almost unreal. But the engrossing interest of the war and the strain of attention to its peremptory requirements, must not lead us to forget that—in spite of war—processes have been going on normally and quietly which in a large measure will determine our future institutions and the sort of instrumentalities we shall have to work with after the war is over. The judicial surveyors have been kept at their important and difficult task of defining the extent of national and state power. Additional monuments have been located marking constitutional boundaries; and, as opportunity waits on power, the disclosure of adequate authority, granted or reserved, will undoubtedly have the effect of opening broad fields inviting legislative experimentation. As we look to the America that is to be—the United States after the war—we must know the equipment of recognized constitutional authority with which it will face its problems.

Recent Important Decisions.

The more important decisions of the past year, as might have been expected, have dealt with questions touching the regulation of interstate commerce. And the significance of these decisions may be found in (1) the extended application of the doctrine that federal rules governing interstate commerce may have the quality of police regulations; (2) the approval of the co-operation of nation and states through the virtual adoption of state laws in an important class of transactions as the standard of

conduct with respect to interstate commerce; and (3) the recognition of the sweeping authority of Congress over the relations between interstate common carriers and their employees.

Federal Police Powers.

A few years ago, in the lottery case,[1] it was strongly argued that the federal government was attempting to exercise police power exclusively reserved to the states. But the Supreme Court of the United States answered that the carrying of lottery tickets from state to state constituted interstate commerce and that the regulation of such commerce was confided to Congress. It was not regarded as a sound objection to the exercise of federal power that the action was of the nature of a police regulation. The far-reaching extent of the federal power was later indicated in the decisions of the Supreme Court of the United States under the Pure Food and Drug Act.[2] In these decisions, however, the court dealt with articles fittingly described as "outlaws of commerce." The most significant application of the doctrine that Congress in its government of interstate commerce may resort to means having the quality of police regulation is found in the recent case of Caminetti *vs.* United States,[3] which arose under the White Slave Traffic Act relating to the interstate transportation of women and girls. It had already been held by the Supreme Court that this act was a valid one as applied to cases of commercialized vice and the use of interstate commerce as a facility of procurement and distribution.[4] But in the Caminetti case the element of traffic in women or girls for gain was absent, and still the court held that the transportation being for "debauchery" and "for an immoral purpose" was within the terms of the statute, and further, that the statute as thus construed was a valid exercise of federal power. There is thus found to be in Congress a wide discretion in the control of interstate transportation of persons as well as of property for the purpose, as the court puts

[1] Champion *vs.* Ames, 188 U. S. 321.

[2] Hipolite Egg Co. *vs.* United States, 220 U. S. 45; Seven Cases *vs.* United States, 239 U. S. 510.

[3] 242 U. S. 470.

[4] Hope *vs.* United States, 227 U. S. 308; Athanasaw *vs.* United States, 227 U. S. 326.

it, of keeping "the channels of interstate commerce free from immoral and injurious uses." When we consider the wide field for judgment in deciding what is "immoral" or "vicious" or "injurious," it is manifest that this decision points the way, through the commerce clause, to the exercise by the federal government in effect of a very broad police power—an authority of vast significance as we consider the relation of the nation to the state in the coming years.

The Webb-Kenyon Act.

Of no less importance, perhaps even of greater importance, is the decision of the Supreme Court of the United States at the last term, upholding what is known as the Webb-Kenyon Act passed by Congress in 1913.[5] That act, it will be remembered, provides in substance that the shipment or transportation of intoxicating liquor of any kind, from one state into any other state, which is intended to be received, possessed, sold or in any manner used in violation of any law of such state, is prohibited. The case which came before the Supreme Court arose under the Statute of West Virginia, enacted in 1913 and amended in 1915, which included in its prohibition the bringing by carriers into the state of intoxicating liquor intended for personal use and the receipt and possession of such liquor, when so introduced, for personal use. As it was held that the state had power to enact its prohibition law consistently with the due process clause of the Fourteenth Amendment,[6] the question remained whether the Webb-Kenyon Act was a valid exercise by Congress of the interstate commerce power, as in the absence of the provisions of that act, the State of West Virginia would clearly have had no authority to prevent the introduction into the state of intoxicating liquor for the personal use of the consignee.

The motive of co-operation with the state in the enforcement of prohibitory legislation in regard to the sale of intoxicants had already had notable illustration in the passage by Congress of

[5] Act of March 1, 1913, 37 Stat. 699; Clark Distilling Co. *vs.* Western Maryland Railway Co., 242 U. S. 311.

[6] See, also, Crane *vs.* Campbell, U. S. Sup. Ct., decided December 10, 1917.

the so-called Wilson Act in 1890.[7] That act forbade the sale of liquor in the original packages although brought into the state in interstate commerce, where the state law prohibited the sale of liquor. This, however, did not touch the introduction of liquor through interstate commerce when there was no resale, but only personal use by the consignee.[8] Hence, in the argument opposing the Webb-Kenyon Act, it was urged that the power which the state enjoyed under the Wilson Act of 1890 was in respect only to incidents of commerce and did not operate as a direct burden on interstate commerce in its fundamental aspect. It was insisted that Congress had no power to delegate to the states the authority to regulate interstate commerce and thus to subject such commerce to a control which in the nature of things would be lacking in uniformity. The Supreme Court answered that the argument as to delegation of power rested on a misconception; that while the Webb-Kenyon Act permitted state prohibition to apply to the movement of liquor from one state to another, it was the will of Congress which caused the state prohibitions to apply and that their application to interstate commerce would cease the instant Congress so directed. And it was further answered that the Webb-Kenyon Act did uniformly apply to the conditions it described, and that the objection was virtually a complaint as to the want of uniform existence of things to which the act applied and not as to an absence of uniformity in the act itself. Moreover, it was said that the argument sought to impose upon the constitutional grant of power a restriction as to uniformity which the grant itself did not contain. The most striking point of the decision was the clear recognition of the authority of Congress, in providing its regulation as to the subject under consideration, to consider the nature of our dual system of government, state and nation, and so to "conform its regulations as to produce co-operation between the local and national forces of government."

The direct consequences of the decision are of the utmost importance. For it is apparent that any state, if it so chooses, may enact a law prohibiting the manufacture and sale of intoxicating liquor, and the receipt and possession even for personal

[7] Act of August 8, 1890, 26 Stat. 313.

[8] Vance *vs.* Vandercook Co., 170 U. S. 438.

use of intoxicating liquor, without any risk of its policy being obstructed by shipments or transportation from another state. It follows that the constitutional amendment recently submitted is not needed for those states who wish to be "dry," as under the operation of the Webb-Kenyon Act, any state may become "bone dry" whenever it pleases without waiting for the adoption of that amendment. The court was careful to repudiate the suggestion that its decision[9] laid the basis for subjecting interstate commerce in all articles to state control and thereby destroyed the constitution. The want of force in that objection, it was said, became obvious by considering the principle which was deemed to be controlling, that is, "the subject regulated (*i. e.*, intoxicants) and the extreme power to which that subject may be subjected." But, so far at least as traffic in intoxicants is concerned, the powers of nation and state are thus used in co-operation to secure the complete suppression of the traffic wherever that is the subject of local prohibition. How far other subjects of commerce may be found to be in like case, we must wait for future decisions to disclose.

Employees in Interstate Commerce.

In another decision of the past year, we find the last and most important word with respect to the control of Congress in time of peace over the conduct of interstate carriers in their relation with their employees.[9] It seems but yesterday, and it was less than a dozen years ago, that lawyers of distinguished ability were expressing the gravest doubt whether Congress could constitutionally authorize the Interstate Commerce Commission to fix maximum interstate rates. Since then we have witnessed the broadest authority conferred and exercised with respect to the establishing of reasonable rates and the prevention of unjust discrimination.[10] Again, the validity of an enactment by Congress of the statute regulating the liability of interstate carriers for the death or injury of employees engaged in interstate commerce was vigorously challenged upon the ground that the relation of

[9] Wilson *vs.* New, 243 U. S. 332.

[10] Interstate Commerce Commission *vs.* L. & N. R. R. Co., 227 U. S. 88; Shreveport Rate Case, 234 U. S. 234; Inter-Mountain Rate Cases, 234 U. S. 476.

master and servant, and specifically the liability of the master in case of injury to the servant were matters for regulation by the state and were not within the sphere of the national government. The Supreme Court,[11] however, sustained the government's position which was thus defined by the then solicitor-general (Mr. Bowers) in words which the court adopted:[12]

"The act of interstate commerce is done by the labor of men and with the help of things; and these men and things are the agents and instruments of the commerce. If the agents or instruments are destroyed while they are doing the act, commerce is stopped; if the agents or instruments are interrupted, commerce is interrupted; if the agents or instruments are not of the right kind or quality, commerce in consequence becomes slow or costly or unsafe, or otherwise inefficient; and if the conditions under which the agents or instruments do the work of commerce are wrong or disadvantageous, those bad conditions may often and will prevent or interrupt the act of commerce or make it less expeditious, less reliable, less economical, and less secure."

It was therefore concluded that Congress might legislate about the agents and instruments of interstate commerce and about the conditions under which those agents and instruments perform their work whenever such legislation bears, or in the exercise of a fair legislative discretion can be deemed to bear, upon the reliability or promptness or economy or security or utility of the interstate commerce act. The qualification is, as the court said, that the particulars in which the relations between a common carrier and its employees are regulated, must have a real or substantial connection with the interstate commerce in which they are engaged. It was thus found that Congress had not exceeded its power in the Employers' Liability Act of 1908,[13] and that it was competent for Congress in defining liability to abrogate the "fellow-servant rule," to extend the carrier's liability to cases of death, and to restrict the defences of contributory negligence and assumption of risk.

The Supreme Court also sustained the "Hours of Service" Act upon the ground that the length of hours of service of the employees of interstate carriers has direct relation to the efficiency

[11] Mondon *vs.* N. Y., N. H. & H. R. R. Co., 223 U. S. 1.
[12] *Id.*, p. 48.
[13] Act of April 22, 1908, 35 Stat. 65.

of the human agency upon which protection to life and property necessarily depend."[14]

Years before, the court had recognized the power of the federal government to prevent the interference with interstate commerce by forcible obstruction and to this end granted the injunction in the Debs case.[15] But it was not until the recent decision in Wilson *vs.* New [16] upholding the so-called Adamson Act [17] that it was held that Congress could regulate the amount of wages paid by interstate carriers to their employees. To the assertion of this power, it was objected that this was a regulation not of interstate commerce, or of any matter having a direct and substantial relation to interstate commerce, but was essentially a regulation of the internal affairs of the carriers, that is, that it was a regulation of matters having no closer relation to interstate commerce than has the price paid for engines or cars or fuel. The court overruled these objections, and dealing not with the question of legislative policy but with the constitutional question held that Congress had the power to create a standard of wages in order to fill the want of such a standard caused by failure of the parties to agree. The court also found that the act in substance amounted to an exertion of the authority of Congress to arbitrate compulsorily the wage dispute and in this aspect sustained the statute. In answer to the contention that this was an invasion of the freedom of the employees, it was replied that there was no question of purely private right involved, since the law was concerned only with those who are engaged in a business charged with a public interest and hence subject to regulation in all matters pertaining thereto. One of the justices in the minority thus stated pithily what he understood to be the effect of the decision: "That Congress has power to fix a maximum as well as a minimum wage for trainmen; to require compulsory arbitration of labor disputes which may seriously and directly jeopardize the movement of interstate traffic; and to take measures effectively to protect the free flow of such commerce against any combination, whether of operatives, owners, or strangers."

[14] Baltimore & Ohio R. R. Co. *vs.* Interstate Commerce Commission, 221 U. S. 612.

[15] *In re* Debs, 158 U. S. 564.

[16] 243 U. S. 332.

[17] Act of September 3, 1916, 39 Stat. 721.

It is thus apparent that the way is open to Congress, in time of peace, not only to prescribe rules for rates, and traffic, and bills of lading and safety appliances, and liability for injuries, but to regulate comprehensively and adequately the relation between the railroads and their employees engaged in interstate commerce, and to this end to provide for compulsory arbitration, whenever Congress is so disposed, subject to the qualification that both employer and employee are protected against confiscation and against what may judicially be regarded as the assertion of mere arbitrary power which would be repugnant to the due process clause. If such comprehensive and adequate regulation is not provided, the responsibility lies with Congress.

Other Decisions Affecting Labor.

Other recent decisions affecting labor are of far-reaching importance. In Paine Lumber Co. *vs.* Neal,[18] a suit brought by manufacturers against officers and agents of the United Brotherhood of Carpenters and Joiners, and others, alleging a conspiracy to restrain interstate commerce in products of the complainants' mills, and to destroy their interstate business by means of a boycott, it was held by the United States Supreme Court that private parties could not maintain a suit for such an injunction under section 4 of the Sherman Anti-Trust Act. It may be noted that the opinion in this case indicates that it was not the view of the majority of the justices that the Clayton Act[19] established a policy inconsistent with the granting of such an injunction against members of labor unions. Whatever may have been expected from the operation of the Clayton Act, it would seem that its language does not warrant the conclusion that the act made conduct lawful which was unlawful before its passage, either under the anti-trust act or otherwise. Still more recently, in the Hitchman case,[20] the United States Supreme Court, applying general principles of law, sustained an injunction restraining the representatives of a labor union from efforts to unionize the complainants' mines, the employees in which had agreed not to join a union during the continuance of their employment.

[18] 244 U. S. 459.

[19] Act of October 15, 1914, 38 Stat. 730; 244 U. S. 471.

[20] Hitchman Coal & Coke Co. *vs.* Mitchell, decided December 10, 1917.

COMPENSATION ACTS.

While the power of Congress has been broadly defined, particularly with respect to carriers and their employees engaged in interstate commerce, on the other hand the past year marks a new era in this country through the sustaining of the power of the states to enact Workmen's Compensation Acts of the type found in the States of New York and Washington. It will be remembered that the Compensation Act passed by the Legislature of New York in 1910 was held unconstitutional by the Court of Appeals in the Ives case.[21] Under the constitutional amendment of 1913, another and more comprehensive Compensation Act was passed and that act was sustained by the Court of Appeals of New York and by the Supreme Court of the United States against the objection raised under the due process clause of the Fourteenth Amendment.[22] The statute imposes liability upon the employer to make compensation for disability or death resulting from accidental personal injury arising out of and in the course of the hazardous employment without regard to fault as to cause, except where the injury or death is occasioned by the employee's wilful intention or where the injury results solely from intoxication while on duty. Generally speaking, it graduates the compensation for disability according to a prescribed scale based upon the loss of earning power, having regard for the previous wage and the character and duration of the disability, and measures the death benefits according to the dependency of the surviving wife, husband, or infant children. The Supreme Court stated that liability without fault was not a novelty in the law. The common law liability of the carrier, of the innkeeper, of him who employs fire or other dangerous agencies or harbors a mischievous animal was not dependent altogether upon questions of fault or negligence. In answer to the objection based upon the constitutional freedom of contract, it was said that laws regulating the responsibility of the employers for the injury or death of employees arising out of the employment were so related to the protection of the lives and safety of those concerned that they

[21] Ives *vs.* South Buffalo Railway Co., 201 N. Y. 271.

[22] Matter of Jensen *vs.* Southern Pacific Co., 215 N. Y. 514; New York Central R. R. Co. *vs.* White, 216 N. Y. 653; 243 U. S. 188.

may properly be regarded as coming within the category of permissible police regulations. The decision with respect to the law of the State of Washington,[23] is still more important, in that under the law the employer is compelled to make contributions to a state fund, so that however prudently one may manage his business even to the point of immunity to his own employees from accidental injury or death, nevertheless under the Washington statute he is required to make periodical contributions to a fund for the purpose of providing compensation to the injured employees of his perhaps negligent competitors. It is obvious that this raised a most important question. It was held that the matter of compensation for accidental injuries with resulting loss of life or earning capacity of men employed in hazardous occupations was of sufficient public moment to justify making the entire matter of compensation a public concern to be administered through state agencies. It was said that certainly the operation of industrial establishments which in the ordinary course of things inevitably produce disabling or mortal injuries to the human beings employed is not a matter of wholly private concern; that it hardly would be questioned that the state might raise by taxation and expend public money to provide hospital treatment, artificial limbs, or other like aid to persons engaged in industry, and homes and support for the widows and orphans of those killed; and that direct compensation should not be deemed to stand on a less secure ground. It was also found that the statute was not in any sense oppressive or the tax excessive, that if the law could be deemed to be justified by the public nature of the object, the compensation allowed was in all respects reasonable, and further that the distribution of the burden with respect to the class of employments in which such injuries generally occurred was justified.

In a later case,[24] arising under the New York Compensation Act, it was held that the liability of interstate railroad carriers for injuries suffered by their employees while engaged in interstate commerce are regulated exclusively by the Federal Act, and that Congress having dealt with that subject no room existed for state legislation even in respect of injuries occurring without

[23] Mountain Timber Co. *vs.* Washington, 243 U. S. 219.
[24] New York Central R. R. Co. *vs.* Winfield, 244 U. S. 147.

fault. Again, under the New Jersey Compensation Act,[25] it was held to be beyond the power of any state to interfere with the operation of the Federal Act by putting carriers and their employees to an election between its provisions and those of the state statute. In another case under the New York Act,[26] the conclusion was reached that the state law could not validly extend to liabilities for injuries which were within the admiralty jurisdiction and thus subject to the federal power.

Conditions of Employment.

Further, as illustrating the power of the state with respect to conditions of employment, it is to be observed that the Oregon law limiting the hours of employees in mills, factories and manufacturing establishments, to 10 hours, with provision for allowing extra time at increased pay, was upheld as a valid health regulation.[27] It is true that the Supreme Court of the United States was equally divided with respect to the validity of the Minimum Wage Law of Oregon and hence the decision of the State Supreme Court sustaining that law was affirmed by a divided court.[28] While this leaves the constitutional question still open to debate, it is apparent that opportunity is afforded for experimentation which cannot fail to throw light at least upon the wisdom of the legislative policy.

As we contemplate future problems, in the light of these and earlier decisions, especially as we consider the importance of intelligent action with respect to conditions of labor, to labor organizations, to the relation of employers and employees in activities affected with a public interest, and the broad field for the exercise of legislative discretion, either by Congress or the states according to the nature of the subject, without invading constitutional rights of private persons, we cannot fail to realize that the failure to deal with these problems with the adequacy demanded by good sense and the spirit of fairness will not be due to lack of power so far as the Federal Constitution is con-

[25] Erie R. R. Co. *vs.* Winfield, 244 U. S. 170.
[26] Southern Pacific Co. *vs.* Jensen, 244 U. S. 205.
[27] Bunting *vs.* Oregon, 243 U. S. 426.
[28] Stettler *vs.* O'Hara, 243 U. S. 629.

cerned, but to the mis-use or non-use of the power which the nation and the states respectively possess.

Regulation of Business in Peace.

In saying this, I have emphasized good sense and the spirit of fairness. For the Supreme Court of the United States has recently pointed out the danger which lies in the assumption that the power to regulate implies the power to prohibit.[29] The court interposes a *caveat,* which may not have been looked for after the decisions in the Noble State Bank[30] and the Trading Stamp cases.[31] I refer to the recent decision holding the Washington statute relating to employment agencies to be in violation of the Fourteenth Amendment.[32] It had been said in Murphy *vs.* California [33] that the Fourteenth Amendment protects the citizen in his right to engage in any lawful business, but that it does not prevent legislation intended to regulate useful occupations which because of their nature or location may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. It was added that between the useful business which may be regulated and the vicious business which can be prohibited there are many non-useful occupations which may or may not be harmful to the public according to local conditions or the manner in which they are conducted. There it was held that an ordinance of a municipality in California prohibiting the keeping of a billiard hall was within the lawful exercise of the police power. In other cases the United States Supreme Court has sustained statutes or municipal ordinances which compelled the discontinuance of certain businesses, as for example in the case of the manufacture and sale of intoxicating liquors,[34] the manufacture and sale of oleomargarine,[35] the sale of cigarettes,[36]

[29] Adams *vs.* Tanner, 244 U. S. 590.

[30] Noble State Bank *vs.* Haskell, 219 U. S. 104.

[31] Rast *vs.* Van Deman, 240 U. S. 342; Tanner *vs.* Little, 240 U. S. 369.

[32] Adams *vs.* Tanner, *supra.*

[33] 225 U. S. 623.

[34] Mugler *vs.* Kansas, 123 U. S. 623.

[35] Powell *vs.* Pennsylvania, 127 U. S. 678.

[36] Austin *vs.* Tennessee, 179 U. S. 343.

the sale of trading stamps.[37] In the Noble State Bank case,[38] it was said that the court was not prepared to deny the power of the state, if the state deemed that course to be necessary in the public interest, to take the whole business of state banking under its control, treating it as a public franchise. In the Trading Stamp cases[39] it was strongly urged that there was nothing in the use of coupons, profit-sharing certificates, etc., that was prejudicial to public health, safety, morals or welfare, or that placed the trading stamp business under the police power of the state, and this view indeed had been taken in decisions of courts entitled to the highest respect. But the United States Supreme Court sustained the state power holding that the business schemes described in the legislation in question were not protected from regulation or even prohibition by the Constitution of the United States.

On the other hand, the limits of state power were found to have been passed by the State of Washington in the Employment Agency Act of that state which declared that it should be unlawful for any employment agency to demand or receive, directly or indirectly, from any person seeking employment any remuneration whatsoever for furnishing him or her with employment or with information leading thereto. The declaration of the statute that it had been found that the system of collecting fees from workers for furnishing them with employment resulted frequently in their becoming victims of imposition and extortion and was therefore detrimental to the welfare of the state, did not save the act. Re-asserting the right of the citizen to engage in any lawful business, the court said that because abuses may and probably do grow up in connection with the business in question and because there was adequate reason for regulating it by proper legislation, there was no sufficient ground for the destruction of one's right to follow a distinctly useful calling in an upright way. Certainly, said the court, there is no profession, possibly no business, which does not offer opportunity for reprehensible practices, and as to every one of them, no doubt, some persons can be found quite ready earnestly to maintain that its suppression would be

[37] Rast *vs.* Van Deman, *supra.*

[38] Noble State Bank *vs.* Haskell, 219 U. S. 113.

[39] Rast *vs.* Van Deman, *supra;* Tanner *vs.* Little, *supra.*

in the public interest. Skilfully directed agitation, said the court, might also bring about apparent condemnation of any one of them by the public. The conclusion of the court was that there was nothing inherently immoral or dangerous to public welfare in acting as paid representatives of another to find a position in which he can earn an honest living, but, on the contrary, such service was useful, commendable and in great demand. The case was one in the opionion of the court which justified regulation, but not prohibition and the prohibition was held, against most vigorous dissent, to be an arbitrary interference with the liberty guaranteed by the due process clause.

Adjustments to War Conditions.

When we turn from the normal processes of peace to the extraordinary conditions incident to a state of war, we are struck (1) with the complete adequacy of constitutional authority to meet all the exigencies of war; (2) with the willingness of our people that these vast reservoirs of power shall be freely drawn upon; and (3) with the enormous difficulty of transmuting constitutional energy into actual achievement. Our difficulties are those of a peace-loving democracy unprepared for war—the difficulties of an indulgent people who have never addressed themselves with sufficient seriousness and definiteness of purpose to the problems of administrative efficiency in the conduct of the public business. We bind our agents with red tape. We multiply offices, bureaus and councils without assuring necessary co-ordination. We make government a great circumlocution office—a practice bad enough in time of peace, but fatal if not remedied in war. It is relatively easy to devise grants of power, to discuss, to formulate policies, to frame measures. The difficult thing is to get things done and that is the first essential in war. The problems of the democracy of the future will not be problems of power but problems of administration. And this war is a vast school. We are grateful that, despite difficulties, so much is being accomplished, and that we are learning the better and the necessary way.

Conscription.

I can speak but briefly of some of the adjustments incident to war. And, first, of conscription, in raising our army. The imme-

diate result will be to give us the fighting men to win the war. We shall never win without them. But the by-products of this process may be of the greatest importance not only during, but after, the war.

We now have a real melting-pot. There cannot but be a new feeling of fellowship, of mutual interest, a better understanding of other lives and points of view. "Fellow-citizens" will have a fresh significance. Of course, we had this experience in the ordeal of the Civil War. But then we were divided. This is the war of North, South, East and West—the war of the reunited nation. And then we have the later generations and the millions of newcomers, and our young men of every race and condition are being fused in the heat of a common preparation and a common strife into a citizenry with a common inspiration and ideal. It is a hard saying, but it may well be that America needed this war to get rid to some extent of the impurities of class distinction, of racial bigotry and separateness, of urban provincialism and sectional selfishness, and to give us the new Amercia with a better appreciation of our mutual dependence, of the necessity of co-operation, and of the worth of character, regardless of race, or color, or sex, or fortune.

There cannot fail to be also a new sense of individual obligation to the nation on the part of those thus compelled to serve it. The Selective Service Law has taught a needed lesson of duty in democracy. And there is likely to be in the case of many who have misconceived our institutions, and their own duty, a new appreciation of the power of our government.

What will be the reaction to this new impression of power? Will it be in favor of individual liberty, or in favor of a larger measure of governmental control over individual conduct and property in the days of peace? I am disposed to think that in some degree there will be both reactions. But I cannot escape the belief that in the main the present exercise of authority over the lives of men will hereafter find its counterpart in a more liberal exercise of power over the conduct, opportunities and possessions of men. Among the ten million young men who have been registered under the draft act, there will probably be a host who are not likely to shrink at the application of power to others if they conceive it to be in the general interest, the suprem-

acy of which they have been bound to acknowledge. If former conceptions of property right and individual liberty are to be maintained in the years to come, it will not be through the same instinctive regard for them which has hitherto distinguished our people, but because it is the conviction that the common interest will be better served by freedom of individual opportunity than by fettering it. In that field of controversy, we shall have our campaigns of education and what such campaigns may fail to teach, we may be sure that experience will teach. But individual privilege when challenged will have to show cause before a public to which old traditions are no longer controlling—a public trained in sacrifice—which will have and enforce its own estimate of the extent of the common right.

Control of Business Opportunities.

We are witnessing the most extraordinary adjustments of business to the demands of war. Momentous events are too recent to need mention and it is too early to define permanent effects. Out of this extraordinary laboratory will come new methods—new discoveries. Many illusions will vanish; much vain theorizing will lose its power. We are not going to be made over in this war, but we shall have a new grasp on realities. Is it too much to expect that we shall have a saner attitude toward business, toward the necessary activities which afford the basis of progress, toward organization of industry, of transportation, of labor. Now that we have a real fight on our hands, demanding the organization and direction of all our resources of men and things, can we not learn to distinguish the real evils from the bogies of the imagination. I hope that the days devoted to the application of the uncertainties of such statutes as the Sherman Act are numbered. May we not look for a better appreciation and a more precise definition of wrongs. What an absurdity it is to find that the very co-operation which the nation finds necessary for its own economic salvation under the strain of war is denounced as a crime in time of peace! Let our legislatures free our statute books of cant. Let us give honest business, fair and reasonable co-operation, fair and reasonable organization whether of business or of labor, a broad field and permit the

enjoyment of the essential conditions of efficiency in the coming days of peace in the interest of the common prosperity. May we hope that through this war we may learn how to regulate and not destroy, how to open the door to American enterprise here and abroad under rules of public protection which can be known in advance and which reason can approve. We cannot tell what the present necessary action with regard to the railroads may portend. But may we not expect that we shall at least have a conserving and upbuilding policy which will recognize that there is no adequate protection to the public interest which does not foster the instrumentalities of commerce. I do not look to the period after the war with an undue optimism. I think that our real progress will still be slow. But I do expect a better adjustment of legislation to the facts of life.

The New Era.

We are at the beginnings of history. It is only a few hundred years since the dawn of what we call modern civilization. It is a very short time since science changed the habits of centuries and swept us into a world of new intimacies. The old Orient is only in the beginning of history. Japan and China are nations of the future, not of the past. Russia has just begun to live, and for many hundreds of years the forces now let loose will have their play in shaping the destiny of that wonderful people. And our nation, the great republic of the West, is just at the beginning of its career. The dream of isolation is at an end. We are now to take our part in a new world, which we are assisting in creating—a world where law is to be supreme, where force shall be only the minister and agent of justice as expressed in law. Those who scoff at law have no conception of democracy, for law is the vital breath of democracy. Those who scoff at courts have no conception of democracy, for the courts are its most essential instruments. Democracy can change the forms of its life but it cannot dispense with the tribunals which apply its principles. We are now fighting the battle of the Law, the battle for the rule of reason against the rule of force, for the establishment of the orderly processes of examination, deliberation and judgment instead of the despotism of arbitrary will, for the sanctity of covenants between states, for the maintenance of the obligation

of states to recognize the principles which lie at the foundation of the international order and which express the common sense of justice.

To the new order America could not escape relation if it would. We shall not relate ourselves to particular matters which do not concern us, but a concert to keep the peace, to establish the supremacy of international law—that is our concern. We shall take our part in international conference; we shall be represented in international courts; we can be counted upon to bear our share of the burden of endeavor to make sure that unscrupulous military power, destroyer of treaties, bestial and inhuman in its cruelties, shall never threaten the peace of the world and curse the earth with its ambition.

VI.

CONTRIBUTIONS OF THE COMPARATIVE LAW BUREAU.

A. NOTES ON INTERNATIONAL PRIVATE LAW AND JURISPRUDENCE.

Uniformity in Bills of Exchange.

The Central Executive Council of the International High Commission published, early in this year, in Spanish, a brief study of the questions as to the form of bills of exchange, which have been under consideration by the Commission, and were the subject of action at its meeting in Buenos Aires in April, 1916.

It will be remembered that in a conference held at the Hague in 1912 as to the form of negotiable instruments, two important papers were agreed on. One was a draft statute or code for a uniform regulation. The other was a convention (adopted *ad referendum*) to support it.

The merits of this scheme, as applicable to American conditions, were discussed at the Rio de Janeiro Conference of the International High Commission. The Central American Council of the commission has now taken it into careful consideration, and publishes the result in a pamphlet of over 300 pages. The introductory chapter, signed by Mr. Secretary McAdoo, the president of the council, John Bassett Moore, and L. S. Rowe, declares that, as to Pan America, there is really but a single point which is now an obstacle to uniform regulations of bills and notes. This is, of course, whether, in determining the capacity of persons, nationality or domicil shall control.

The Council disclaims any endeavor to pass judgment on the abstract and intrinsic advantage of either test as compared with the other. It regards the question with respect to America as differing from the question as regards Europe. The principle of nationality may be more convenient as to European conditions in countries from which there is normally a large emigration, and that of domicil to countries which depend on the entrance of immigrants for their progress. So the United States and Argentina, from the same cause, may be more inclined to favor

the domiciliation of immigrants than other American countries. It may be claimed that to adopt the standard of nationality is a kind of abdication of national sovereignty, with a risk of splitting up the state into independent subdivisions. The council has invited an expression of opinion on these subjects from different American jurists, and presents the views of many, in a shape to aid others in coming to a just conclusion.

It is pointed out that in the United States the question is primarily one of local policy and determination, and that to obtain unanimity of action would require the concurrence of very many different states. The Council frankly admits the improbability of securing absolute uniformity throughout all America, but presents for further consideration suggestions of changes in the Hague Regulation and Convention which would remove many minor causes of difference. Particular prominence is given to the use of the doctrine of *Renvoi* and in general to Article 74 of the Hague Convention, which is based upon it. A careful examination of this feature of that plan, prepared by Dr. Eusebio Ayala of Paraguay, is given in full (pp. 287-292).

The Laws of the A B C Nations of South America.

Another important contribution to the study of comparative law has been made by Prof. Edwin M. Borchard. It is a "Guide to the Law and Legal Literature of Argentina, Brazil and Chile," published by the Library of Congress (523 pp. $1). He gives large space to the new Civil Code of Brazil, which went into effect January 1, 1917, and several sections of which were published in this Journal in April, 1916.

This the author pronounces the most scientific civil code of Latin America. Its treatment of bills and notes, in accordance with a prior decree of 1908, he regards as having furnished the basis for the Hague Regulation of the law of bills of exchange, adopted in 1912.

Roman Law in the Modern World.

The fullest statement of the history and growth of Roman law yet produced in the United States was published last fall—"Roman Law in the Modern World," by Prof. Charles P. Sher-

man of Yale University (Boston Book Company, 3 vols.). Vol. I is mainly historical, serving to bind together the ancient and the modern law of the world. Vol. II is in the nature of a systematic manual. Vol. III is a subject guide and index. Any considerable topic of Roman law and its effect on the law of modern nations can with these aids be readily traced. Canon law is also briefly described.

This work will be of great assistance to students of comparative law. It is clearly written, and well arranged for carrying out the author's plan.

Fellowships in International Law.

The progress of both public and private international law as a science is furthered by everything that promotes its intelligent study by private citizens. Public men seldom have time for thorough work in this direction. It is for them to adopt, for private individuals to propose, reforms.

It is a matter for congratulation, therefore, that when the American Society of International Law declined, early in 1917, to undertake the appointment and supervision of fellowships in international law, as had been previously contemplated, the Carnegie Endowment took up the burden substantially on the lines originally proposed to the society. Forty applications for fellowships were presented, and 10 granted, in April, 1917. The incumbents for the year 1918-1919 will be selected this month by the Division of International Law of the Endowment.[1] Half of the fellows selected in 1917 have in view the regular teaching of international law, as their life work.

The New German Society of International Law.

A German Society of International Law was organized at Berlin in January, 1917. One of its announced objects is to replace some of the provisions of the Hague Conventions of 1907, which in its opinion are unscientific and were adopted without sufficient consideration.

[1] Proceedings of the American Society of International Law, 1917, 148; American Journal of International Law, II, 843.

AMERICAN JURISPRUDENCE: NATURAL JUSTICE.

The development in recent years of the scope of our constitutional provisions to secure due process of law is strongly evidenced in one of the recent volumes of reports of the Supreme Court of the United States.

In volume 243 there are three cases in which violation of "natural justice" is considered, under certain circumstances, as a ground for holding a statute invalid.

The first of these turned on the validity of a law of Texas authorizing service of process by publication on a person formerly domiciled there, who had removed to another state. In reversing the Supreme Court of Texas, the court (Holmes, J.), after alluding to the Fourteenth Amendment, observed that "subject to its conception of sovereignty even the common law required a judgment not to be contrary to natural justice."[2]

In the second case a workman's compensation act was attacked and sustained. Mr. Justice Pitney gave the opinion and, after remarking that "of course, we cannot ignore the question whether the new arrangement is arbitrary and unreasonable, from the standpoint of natural justice," concluded a critical examination of the justification for the statute thus:

"It is plain that, on grounds of natural justice, it is not unreasonable for the state, while relieving the employer from responsibility for damages measured by common-law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault, to require him to contribute a reasonable amount, and according to a reasonable and definite scale."[3]

In the third case (one involving the validity of another act of the same class), in which Mr. Justice Pitney again spoke for the court, he said that in regard to such an act "the crucial inquiry under the Fourteenth Amendment is whether it clearly appears to be not a fair and reasonable exertion of governmental power, but so extravagant or arbitrary as to constitute an abuse of power." After referring to New York Central R. R. Co. *vs.* White, he proceeded to say that "we are unable to discern any ground in natural justice or fundamental right that prevents

[2] McDonald *vs.* Mabee, 243 U. S. 90, 91.

[3] New York Central R. R. Co. *vs.* White, 243 U. S. 188, 202, 203.

the state from imposing the entire burden upon the industries that occasion the losses."[4]

Mr. Justice Holmes, in 244 U. S. 221, 222, has thus added to the stock of striking phrases proceeding from his pen with reference to fundamental conceptions of jurisprudence:

"I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions. . . . . The common law is not a brooding omnipresence in the sky, but the articulate voice of some sovereign or quasi-sovereign that can be identified; although some decisions with which I have disagreed seem to me to have forgotten the fact."

These picturesque pronouncements may take place alongside of his aphorism that "constitutional law, like other mortal contrivances, has to take some chances."[5]

Arrests of Princes.

The general rule that exceptions from an express contract are not to be implied has received a new reading in the Supreme Court of the United States, in the case of the Kronprinzessin Cecilie.[6] This vessel, owned in Germany and carrying Amercian goods and German passengers to England, turned back, in obedience to a wireless message from her owners, when near her port of destination, to avoid danger of seizure there from the outbreak of war between England and Germany. The court held that, while the only direct exception in the bill of lading was that as to arrest or restraint of princes, extreme danger of such arrest justified the abandonment of the voyage.

Election of Nationality in France.

France, by an amendment to her civil code, requires, during the present war, domiciled children of foreigners, born on her territory, to exercise their option to adhere to their father's nationality, at the age of 18, or at latest within six months thereafter. The age for exercising the option had been 21.

[4] Mountain Timber Co. *vs.* Washington, 243 U. S. 219, 237, 243.
[5] Blinn *vs.* Nelson, 222 U. S. 1, 7.
[6] 244 U. S. 12.

Alien Enemies.

Among many recent cases respecting the *status* of alien enemies, the following seem to merit special notice:

In 1913, under the treaty of Bucharest, Dobritch, by change of frontier, was ceded by Bulgaria to Rumania. A suit was brought in France, after she was at war with Bulgaria, and an objection taken, on the ground that the plaintiff was born in Dobritch, and so an alien enemy, notwithstanding he had obtained Rumanian passports, and Rumania was an ally of France. The court held that change of frontier which involved no great surrender of territory did not change nationality in the case of a citizen of the ceding state who was then domiciled abroad.[7]

A partnership is not disqualified from prosecuting a suit in the country of its domicil, by the mere fact that one partner is an alien enemy. If such partner is indebted to the firm to an amount exceeding his share of the claim in suit, the action will not be stayed.[8]

The Imperial Supreme Court of Germany was recently called upon to enforce what were claimed to be the consequences of a feudal obligation. In the principality of Lippe, one of the states of the Empire, are some ancient feudal estates held by the von Donap family. Some are residents in Germany, some in England and some in the United States. The Prince of Lippe-Detmold asked the Imperial Supreme Court to adjudge the rights of the English von Donaps to the German lands forfeited by their being alien enemies. The court held that the incidents of feudal tenure no longer existed in such respects; that it rested on the voluntary act of the vassal in assuming that position; and that the duty of allegiance was now a legal one resulting from the modern order of the state.

The Convention of the Hague Conference of 1907, as to laws and customs of war on land, provides that an enemy's property shall not be destroyed or seized, unless it be imperatively required by the necessities of war, and that the rights and actions of subjects of an enemy shall not be declared extinguished or suspended,

[7] Burgard *vs.* Mair, Clunet's Journal, 44.

[8] Speyer Bros. *vs.* Rodriguez, Law Journal, 1917, 430.

or remedies in court withheld. This was a "counsel of perfection," and France declared the sequestration of the property in France of alien enemies to be necessary, in September, 1914, very soon after the outbreak of the present wars. This policy she has since systematized by ministerial circulars and judicial decisions. Dr. Eugène Audenet gives a full account of this practice in an essay on the sequestration of enemies' property in France, published in Volume 44 of Clunet's Journal of International Law (p. 1601). He takes the ground that these provisions of the Hague Convention were ill adapted to a general war, and could therefore properly be disregarded, especially as respects citizens of another party to it, which has itself violated some of its provisions, and when, as in France, it is a matter of possession, not confiscation.

Germany, in November, 1917, extended to citizens of the United States an ordinance of 1915 as to compulsory notification of property of foreigners situated in the empire. A few days later, the United States, acting under our Trading with the Enemy Act, denied licenses to insurance companies of enemy countries. Life insurance companies were excepted as far as concerns existing policies. It is estimated that before the war over four billion dollars of insurance in countries now our enemies or allies of our enemies was in force, and licenses to continue such business were granted temporarily when we made our declaration of war.

A policy of life insurance was issued to a German residing in Switzerland, before the war. The company was a French one, and a French statute declared such contracts with Germans to be void. The assured having removed to Germany brought suit in Switzerland to compel the company to accept the renewal premium, and prevailed. The contract being a Swiss one, a public law of France in the nature of war legislation could not be allowed to defeat a remedy in the Swiss courts.[9]

The Rule of Practice under the English Judicature Act allowing courts to pronounce a declaration as to the rights of the

[9] *In re* Campagnie Nationale *vs.* Bromica (1916), Clunet's Journal, 44, 306.

parties, though unaccompanied by any order for relief, has proved of great value during the pending wars in determining promptly and clearly the rights of alien enemies as against Englishmen.

In the first volume of King's Bench Division Reports for 1916, several important cases of this character went to judgment. Thus in one (Schaffenius *vs.* Goldbery, p. 284) it was declared that a contract for services by an Englishman, made before the war by a German who during the war was interned in England, continued to bind the other party: while in another (Sapel *vs.* Sinleid, p. 439) it was decreed that obligations under a charter party had not been cancelled by the commandeering of the vessel by a neutral government.

The beneficial character of this rule of court is proved by the extensive and ever increasing use made of it. In the second volume of Chancery Reports for 1916, 64 cases are reported, and 43 of these were brought for a declaration of rights. In a carefully studied article in the *Michigan Law Review* it is asserted that two-thirds of the chancery cases in England are now of that character, some with and some without prayers for consequential relief.

S. E. B.

B. EDITORIAL MISCELLANY.

The attention of the American Judiciary and the American Bar is invited to the report of Charles S. Lobingier, Judge of the United States Federal Court for China, upon the work of his court at Shanghai, China, and especially to the "Proposed Rules of Evidence," formulated for adoption and use in China. Judge Lobingier would appreciate comment and suggestions from the American Judiciary and the American Bar upon these proposed rules of evidence, before their promulgation in China. It is earnestly hoped that our American judges and lawyers may find opportunity to respond to the invitation of Judge Lobingier, to comment on, or suggest changes in, or amendments to these proposed rules of evidence.

The Comparative Law Bureau regrets not to have any reports upon the fields of France and Italy. This is due to the fact that our associate editor, Errol White, of the Philadelphia Bar,

is now in France, acting as an interpreter in a regiment of the United States Marines, and connected with the American Expeditionary Force there; and our associate editor for Italy, Attilio Stanislao Du-Besse, is, as he has been since the entry of Italy into the Great War, serving at the Front with his regiment of artillery.

We hope that these associates may return safely from the war, and be able to make valuable contributions to future numbers of the Bulletins of the Comparative Law Bureau.

OBITUARY.

Carl Goos died at Copenhagen at the beginning of 1918 in his 84th year. In him the Danish (and the whole Scandinavian) legal world has lost its finest ornament, its most famous member, its greatest genius. His direct influence in shaping the minds of thousands of lawyers of Denmark, and of hundreds in Norway, Sweden and Finland, and even of other countries, has been greater than that of any other ten men taken together, and the extent of his indirect influence on the legal world generally cannot even be estimated, so much less so since the knowledge of him and of his thoughts and work is bound to spread and grow for many years to come.

His was a deep mind, a philosophical mind, but it was most of all a disciplined mind, and consequently an eminently practical mind. His philosophical works will live for generations, and by them the world will remember him, although his conclusions will be disputed, and many of them may be discarded. But the conclusions reached in the one of his works written mainly for practising lawyers, viz., his commentaries upon the Penal Code of Denmark, practically never have been disputed, and will not be discarded except with the law upon which they are founded. In no other legal literature can be found a work on the same subject to be compared therewith. It has been adopted universally within the realm of Danish law, and it may almost be said that with its publication it ceased to be a commentary upon the Danish Law of Crimes, and became this law itself.

A. T.

C. SPECIAL ARTICLE.

THE WORK OF THE INTERNATIONAL HIGH COMMISSION IN 1917.

A review of the work of the International High Commission during the year 1917[1] indicates what progress has been made toward the solution of the problems entrusted to the commission by the Pan-American Financial Conference of 1915.

The Central Executive Council of the commission consists of W. G. McAdoo, Secretary of the Treasury, President; John Bassett Moore, Vice-President; and L. S. Rowe, Secretary-General. The work of the entire International High Commission, which consists of 20 sections, each with nine members and each under the chairmanship of the Minister of Finance or the Secretary of the Treasury, as the case may be, is directed by the Central Executive Council. The council has given special consideration to the progress made during the last few months in securing uniformity of laws and of administrative regulations throughout the American continent.

The work of the council in the field of commercial law receives special attention, a report having been prepared in the Spanish language on bills of exchange, and now being sent to the national sections of the International High Commission, faculties of law and other persons interested in the Spanish-speaking countries. With this publication, the Central Executive Council completes the first item in its program in the field of commercial law, namely, the preparation and distribution of authoritative texts in translation with intelligible commentary. The council proposes vigorously to reinforce its action from time to time with a view to legislative reform in the respective countries. It has now published the following texts:

(a) A Spanish translation of the Bills of Exchange Legislation of the United States and of Great Britain, and of the Hague Rules on Bills of Exchange as modified at Buenos Aires, together with texts of Spanish-American legislation.

[1] See *ante*, page 111, a notice of the recent publication of the commission as to conformity in bills of exchange.

(*b*) A Spanish translation of the Bills of Lading Legislation of the United States (State and Federal), with introduction and commentary.

(*c*) A Portuguese translation of the Bills of Lading Legislation of the United States (State and Federal), with introduction and commentary.

(d) A Spanish translation of the Uniform Warehouse Receipts Act of the United States with commentary.

In addition, the council has in press a pamphlet containing preliminary data necessary for a thorough and scientific survey of the problem of making uniform the legislation of the American republics on checks.

With reference to treaty drafts concerning commercial travelers and an international gold clearance fund submitted by the council to the national sections of the Republics of Central and South America for study and criticism, a certain measure of success may be reported. The council, in connection with these matters which so largely involve diplomatic action, is, of course, working closely in touch with the Department of State of the United States and with the foreign offices of the various republics.

The inauguration of the International Trade-mark Registration Bureau at Havana, pursuant to Article XVI of the Trade-mark Convention of 1910, was decreed by the Cuban government on December 6, 1917. The Bureau will serve eight of the eleven republics comprising the northern group as constituted at the conference of 1910; and when the other three—Mexico, Haiti and Salvador—will have ratified it, they likewise will participate in its benefits. Action on their part, as well as on the part of the countries of South America which have as yet failed to ratify the convention, will be sought by the council. Seven ratifications, of which four have already been recorded, are needed to make possible the opening of the Trade-mark Registration Bureau at Rio de Janeiro, corresponding to the bureau at Havana.

The council has renewed its effort to secure further ratifications of the convention on patents adopted at the Buenos Aires Conference of 1910, and with regard to the convention on copyrights, adopted at the same time, an endeavor is being made to facilitate the informal and direct transfer of copyright registration entries between the respective registration offices, in order

that literary property coming under the head of musical compositions for mechanical instruments and moving picture scenarios may, because of their peculiar liability to abuse, receive special protection.

The council has taken up with the respective ministers of finance the arbitration of commercial disputes in the manner in which these disputes are now adjusted by the chambers of commerce of Buenos Aires and of the United States. The chamber of commerce of Montevideo is about to conclude a similar agreement with the chamber of commerce of the United States. The chairmen of other sections, notably Peru, Venezuela, Bolivia and Salvador, are studying the matter seriously.

With reference to the important questions under the heading of customs documentation and regulations and the classification of merchandise for statistical purposes, the council reports that it has been able to distribute among the respective national sections the original French texts, in the case of Brazil and Haiti, and Spanish translations in the case of the other American countries, of the convention and uniform statistical schedules adopted at the International Conference of Commercial Statistics of Brussels in 1913. An effort has been made to have the responsible customs officials of each country fit into the Uniform Brussels Statistical Classification the articles now anywhere entered either in the statistical or customs tariff of the given country. Once this material has been received it will be possible to expand the Brussels Classification so as adequately to meet the requirements of all the countries participating, no matter what may be their different circumstances of production and distribution. Already the council has many indications of the receptive frame of mind of the respective national chairmen in this matter.

With reference to customs administration and regulations, a number of communications have been despatched by the council to the respective chairmen which do not require any commentary. These communications deal with customs inspection by day or night, sanitary visit, the rules regarding simultaneous loading and unloading, and the requirements for consular documentation. A long and detailed communication entering at great length into the necessity for greater simplicity and economy in the matter of harbor dues has been sent to the chairmen of the national

sections. The council is gratified at the favorable character of the replies which so far have come to hand.

The council has now covered in a preliminary way all the major subjects and several of the minor subjects placed on its program in 1917. It is realized that only the initial step in each case has been taken and that it now becomes necessary to take up the more complicated task of bringing its work in these respective fields to maturity. It is felt that with several of the major topics briefly referred to above that an advanced stage may be reached during the present calendar year; and these topics will continue to receive the chief attention of the council. In addition, certain topics in commercial law will be prepared for careful treatment by the commission as a whole—especially the subject of conditional sales and chattel mortgage legislation. This last topic has been selected in deference to the resolution on this subject adopted by the commission in its meeting at Buenos Aires.

Two detailed discussions of the aims and accomplishments of the commission have been published recently, one by the Honorable John Bassett Moore, under the title "The Results of the Pan-American Financial Conference," in the Bulletin of the Pan-American Union, August, 1917; the other by the Honorable W. G. McAdoo, entitled "The International High Commission and Pan-American Co-operation," in the American Journal of International Law for October, 1917.

C. E. McGuire.

D. FOREIGN LEGISLATION, JURISPRUDENCE AND BIBLIOGRAPHY.

1. CANADA.

The most extraordinary acts were:

C. 38 of Alberta whereby 12 named persons were made members of the succeeding Parliament, and c. 19 of Newfoundland whereby the Legislature extended its own life.

(The same course has been followed in Ontario this year.)

The legislation of Alberta and Saskatchewan giving representation to soldiers and nurses is curious.

DOMINION OF CANADA (PUBLIC ACTS).

As was to be expected much of the legislation was respecting some phase of war activity.

C. 2 made a special war appropriation of $500,000,000; c. 28 imposed a war tax on incomes of a far-reaching character; c. 6 imposed a war tax on business profits, and c. 38 regulated war-time charities.

For the first time in history, a Minister of the Crown was appointed who was expected to live without Canada—a Minister of the Overseas Military Forces who should be responsible for the administration of the military affairs of Canada overseas, the office to continue during the continuance of the war and until the termination of the session of Parliament held next after the the end of the war. A salary of $7000 was annexed to the position. While there was no specific provision in the act to that effect, it was understood on all hands that this minister would necessarily reside overseas (c. 35).

Certain financial arrangements made with the Home Administration were ratified (c. 8); the Harbor Board at Quebec assisted by a loan of $1,500,000 (c. 4); provision was made for assisting the erection of dry docks (c. 27); a Board of Scientific and Industrial Research provided for by c. 20; the settlement of returned soldiers on public lands, assistance, financial and educational, to them and their families by c. 21.

A most important piece of legislation was the Military Service Act (c. 19). In addition to the Common Law obligation of every British subject to defend the realm, there had been many statutory provisions for militia—the earliest in Canada was the Ordinance at Quebec in 1777, 17 Geo. III, c. 8, the first in Upper Canada in 1793, 33 Geo. III, c. 1. (U. C.). On the formation of the Dominion in 1867, militia became one of the objects of Dominion, not Provincial, power; and full provision was made by Dominion legislation for the militia.

It was, however, considered by the government that the existing Militia Act did not fully meet the situation. We had some 425,000 volunteers, but recruiting had fallen off, and it was desired to raise our quota of troops to 500,000—a number equivalent proportionately to about 7,000,000 from the United States. "The Military Service Act 1917", 7-8 Geo. V, c. 19, makes every male British subject (with named exceptions) liable to be called

out on active service in the Canadian Expeditionary Force so long as he is under 45. Six classes were made, of which only Class 1 has so far been called out, viz., "those who have attained the age of 20 years and were born not earlier than the year 1883 and are unmarried or are widowers but have no child." Careful provision was made for exemption in proper cases.

The British North America Act 1867, the written Constitution of Canada, provided, by c. 50, that the life of a Parliament should be five years; the existing House of Commons had been elected in 1911 (on the reciprocity issue) and consequently it should have come to an end in 1916. But a unanimous petition of both Houses of Parliament was sent across to Westminster asking for an extension of the life of Parliament by one year; and an act was passed to that effect by the Imperial Parliament (1916) 6-7 Geo. V, c. 19 (Imp.). The Prime Minister in 1917 proposed that a similar petition should be presented to extend the life of Parliament by another year: this proposition was carried by a substantial majority in the House of Commons, 82 to 62 with 10 pairs, but it was recognized that nothing but a unanimous or practically unanimous petition should be presented and the scheme was dropped. It was accordingly necessary that there should be a general election.

In 1911, by the act 5 Geo. V, c. 11, for the first time provision was made for electors voting elsewhere than in the polling booths in the constituency; every male British subject of 21 years of age serving in the Canadian military force who had resided for 30 days in any constituency was given a vote in such constituency, and due provision was made for taking his vote abroad. In 1917 this received a great extension during the present war and before demobilization—every one, male or female, under or above 21, whether ordinary residents in Canada or not, whether an Indian or not, who being a British subject has within or without Canada enlisted in the Expeditionary Army, the Canadian Navy, the Flying Corps, Naval Air Service or Auxiliary Motor Boat Patrol was given a vote: and his vote was to be counted in the Electoral District in which he had resided; if there were no such District then where he had at any time resided, and if there were no such District, then in any District he might name.

"The War-time Elections Act," c. 39, went further: it gave the franchise to every female person "the wife, widow, mother,

sister or daughter of any person, male or female, living or dead, who is serving or has served without Canada in any of the military forces or within or without Canada in any of the naval forces of Canada or of Great Britain in the present war." Mennonites and Doukabors were disfranchised (unless they had volunteered). So, too, were all naturalized British subjects born in an enemy country and naturalized after March, 1902 (except Christian Armenians and Syrians). This act was to be in force during the present war and until demobilization after peace.

There was also some legislation not due to the war or the pending election. C. 18 validated an agreement entered into with the United States in 1916 for the protection of certain migratory birds, chiefly game-birds and insectivorous birds; and c. 36 regulated hunting and trapping of game, winged and quadrupedal, in the Northwest Territories, *i. e.*, that part of Canada not in any Province or the Yukon Territory and therefore having no legislature. C. 24 authorized the taking over by the Dominion of the Canadian Northern Railway, one of our three transcontinental railways, which had got into financial difficulties.

The whole law of insurance was codified by c. 29 and unauthorized insurance made a crime by c. 26, while amendments of more or less importance were made to the Companies' Act by c. 25.

In our criminal practice, counsel representing the Crown, *i. e.*, prosecuting counsel, has the right without challenging to cause any juryman to "stand aside," with the result that that juryman is not called again unless and until the panel is exhausted: when called the second time, the juror must be challenged or sworn. The number so directed to stand aside theretofore unlimited was limited to 48 unless the judge upon special cause shown otherwise orders (c. 13). (I have never but once in 35 years' experience known so many as 48 to be ordered to stand aside.)

Dominion of Canada (Private Acts).

There was the usual grist of private legislation: Three new railway projects were authorized and 16 railway companies procured amendments to their charters; two insurance companies were incorporated and six procured amendments; one telegraph and one heat and light company with a few private ventures were incorporated; the Army and Navy Veterans, the Aerial

League, the Boy Scouts, the Girl Guides, the Imperial Order of Daughters of the Empire, all received corporate existence; 12 unfortunate men and five unhappy women were granted divorce from the erring spouse.

Provincial Legislation.

ONTARIO.

The approach of an election is indicated by three acts dealing with elections and voters' lists (cc. 4, 5, 6). The war is brought to mind by an Act for the Agricultural Settlement (on Provincial lands) of Soldiers and Sailors Serving Overseas (c. 13).

The Power Commission having control of "public utilities" had its powers enlarged and extended by c. 20. Public ownership has apparently come to Ontario to stay: it is steadily growing in public favor. A Provincial highway system is enacted by c. 16 which is intended to take the place in some instances of the rather happy-go-lucky municipal system inaugurated in this Province in 1793 by the act, 33 Geo. III, c. 4 (U. C.), and retained ever since to the waste of public money and the discomfort of travellers.

There was a great mass of unimportant legislation of purely local interest: Amendments to the Municipal Act, the Motor Vehicles Act and other acts, but none which seems to call for comment.

The Law Society (which alone can call to the Bar) was authorized to admit a certain student to third year standing although he had not obtained a matriculation certificate (by reason of being in arms for the empire) (c. 108); and disposition was made of the land belonging to three estates not authorized by the wills of the deceased (cc. 109, 110, 111).

The legislation of the session of the Legislature of Ontario just (April 2) came to an end, and not yet distributed in official form. One act which will startle American lawyers extends the life of the sitting legislature until a year after the war, otherwise the legislature would have expired this year and an election would have been necessary.

QUEBEC.

The legislation of this Province is not yet to hand.

NOVA SCOTIA.

The war is no doubt responsible for the act for the encouragement of ship-building (c. 1) which enables the government to give a cash subsidy to any company for the construction of ships; those for the encouragement of agriculture (cc. 11, 60) and for the encouragement of dairying (c. 68); the further authority given to municipalities to subscribe to patriotic funds (cc. 74, 75, 104, 106, 119, 135, 136, 138, 140, 146, 150, 158). The Franchise Act is amended, but in no important particular (c. 18); medical students enlisting in the Army Medical Corps are protected (c. 31), as are dental students who enlist in the Canadian Army Dental Corps (c. 33); it is made clear (c. 41) that women may become barristers or solicitors; a tax is imposed on long distance telephone communications (c. 56), and there are very many acts of purely local interest.

In the Private Acts is one changing the name of "Morris Hyson" to "Morris Rafuse" (c. 174) for what reason is not apparent; the reason for c. 199 which changes the name "Kaizer" to "Thistletone," needs no explanation; or c. 195 which changes "Kaizer" to "Kingdon" for four innocent people; nor does c. 177 which changes the name of the district of "Wittenburg" to "Mapleville."

NEW BRUNSWICK.

Assessments made for the Canadian Patriotic Fund are validated by c. 29, and municipalities are authorized by c. 32 to borrow money to buy food and other necessaries for their people during the war; the law for the suppression of traffic in intoxicating liquor is strengthened by c. 22; the law respecting solemnization of marriage is consolidated with unimportant changes by c. 23; game protected by c. 24 and sheep by c. 25. Other legislation calls for no remark except perhaps c. 94 which changes the name of four persons from McKeon to O'Donnell—*de gustibus non est disputandum.*

PRINCE EDWARD ISLAND.

The war tax imposed in 1916 is continued to the end of the existing Legislative Assembly (c. 2); prohibition receives further assistance by cc. 5, 6; beaver are protected by c. 11; the continued invasion of the Island by the ubiquitous automobile is

manifested by c. 9 respecting the registration of them; a university is incorporated for the first time in the Island—St. Dunstan's University under Roman Catholic auspices with full university powers (c. 20). Other legislation calls for no remark.

MANITOBA.

The Patriotic Levy authorized in 1916 to the amount of one and one-half mills is increased to two mills (c. 67); insectivorous birds are protected by c. 44, game by c. 37, sheep by c. 82; intoxicating liquor receives another blow by c. 50 and c. 92; care of the feeble-minded is provided for by c. 34. The other legislation is of purely local interest.

SASKATCHEWAN.

Some slight inducement is held out to enlist by the provisions of c. 2 which imposes a poll tax of $2 on all male persons of 21 years and upward who are not in the military or naval force on active service or in the Northwest Mounted Police. C. 4 is novel: it provides for three members to be elected for the next legislature to represent those who are engaged overseas in the Canadian or British Expeditionary Forces; the voters to be "all persons of whatever age or sex who at the time of the election are serving in any capacity in the Expeditionary Forces of Canada or in His Majesty's imperial forces in Great Britain, France or Belgium" and who for at least three months before enlisting were residents of Saskatchewan. One of the members was to be elected by the voters in Great Britain; the other two by the voters in France or Belgium. (At the election which took place, one of the representatives chosen was a lady.) Prohibition is strengthened by cc. 23, 24. None of the other acts call for remark except cc. 32 and 33: Mr. Sutherland, a member of the Provincial Legislature, had been paid for his services as a member of a commission to examine into the marketing of live stock; Mr. Leitch, another member, had been paid for work done by his horses on a public highway, both of these payments were by the government and members of Parliament are not allowed to receive pay from the government. These acts relieved the two gentlemen named from the penalty of $100 a day and loss of seat in the legislature which they had incurred by their thoughtless but innocent actions.

ALBERTA.

The war is responsible for the Patriotic Tax Act (c. 17) which allows municipalities to levy a special tax on all ratable property (except that of those in the overseas forces, their wives and infant children), the tax to be handed over to the Canadian Patriotic Fund in Alberta. The War Veterans' Association receives incorporation by c. 18 (not very unlike the G. A. R. in its objects).

In preparation for an approaching general election, c. 12 provided for two members of the Assembly shortly to be chosen, who should represent "the soldiers and nurses from Alberta engaged in the present war in Great Britain and Ireland or in France or Belgium"; and due arrangements are made for taking the vote. By c. 38, 12 members of the legislature who were on active service with the forces were declared members for their constituencies in the Assembly about to be elected.

Prohibition is assisted by c. 22 which closes some crevices discovered in the working of the Act of 1916 (c. 4).

The celebrated Royal Northwest Mounted Police are in Alberta to be replaced (in fact, in great measure taken over) by "The Alberta Provincial Police" in form a less military organization, but in fact substantially the same—*plus ça change, plus c'est la même chose.*

Game is still further protected by c. 35 and the extermination of wolves advanced by c. 34 which provides a bounty on timber-wolves, male, female and pups, and on female prairie wolves. Improvement of the breed of horses (a most important industry in this Province, and more important now than ever before notwithstanding the automobile) receives attention in c. 16 for the enrolment of stallions—all such animals are to be thoroughly examined and reported on by government inspectors, and none is to be allowed to stand for service without a proper certificate.

Other legislation calls for no remark.

BRITISH COLUMBIA.

The war relief provided in 1916 by c. 74 is bettered in 1917 by c. 74, preventing action against volunteers and their families; the city of Vancouver receives a park in which to erect monuments to soldiers from British Columbia in the present war (c. 37).

The franchise given to women in 1916 is made more clear and effective by c. 23, and that the mother has the same inherent rights as the father is recognized by c. 27, which removes all disabilities of married women with respect to guardianship of minor children.

The Prohibition Act about which there was so much trouble in 1916 is brought into force by c. 49; echoes of the referendum of 1916 on prohibition are heard in c. 50, an act to provide for the investigation of the overseas vote.

There seem to have been irregularities at home as well as abroad, for cc. 20 and 21 provide for an investigation by judges into irregularities and illegal practices alleged to have been committed in Fort George and Vancouver at the election in September, 1916.

Any municipality may if the scheme is approved on a plebiscite have "proportionate representation" in its municipal elections (c. 51). It is not without interest to note that on the insistence of the House of Lords, the mother country is to try the experiment in the House of Commons at Westminster—100 constituencies are to be selected for the experiment.

The usual practice in Canada is to give to the members of a well-established profession, the full control of the education, examination and licensing of their members. That practice began in Upper Canada in 1797, when by the Provincial Act, 37 Geo. III, c. 13 (U. C.), the Law Society of Upper Canada was formed of all practising lawyers, since which time the lawyers have had full control of their profession. Since that time in Ontario, physicians, druggists, dentists and land surveyors have been formed into colleges or associations with full control and with a monopoly of practice. Architects have the same rights with "registered architects," but have no monopoly.

Pursuing this practice c. 16 forms "The College of Dental Surgeons of British Columbia," and commits dentistry in the Province to its charge.

British Columbia has become a great grazing province; and a Branding Act on much the same lines as in the grazing states of the Union was passed for the marking of cattle and horses, the "Brand Act" (c. 8).

Contagious diseases in animals are further guarded against by c. 14; sheep protected from dogs (c. 57).

Other legislation requires no comment.

YUKON TERRITORY.

A Workmen's Compensation for Injuries Act along familiar lines appears as c. 1; and c. 6 provides that no one may (except in cases of emergency) work on any public works of the Territory more than eight hours per day. The Miners' Lien Ordinance is amended and strengthened by c. 8 so that any one who performs any work or furnishes any wood in mining or working any placer or quartz mining claim has his preferential lien on the claim, etc.

NEWFOUNDLAND (NOT A PART OF CANADA).

The war is responsible for the War Pensions' Act (c. 13), the Volunteer Force Act (c. 15), the act allowing volunteers on active military or naval service to dispose by will of their property in any manner in which he might lawfully do so by the laws of England, and directing such wills to be admitted to probate (c. 16). This is intended to validate nuncupative wills and the Militia Act (c. 17). A direct consequence of the war is c. 38 which authorizes a loan of $3,000,000 for military and naval purposes. Indirectly it is responsible for the Daylight Saving Act (c. 9) which sets the clock ahead one hour from the second Sunday in June till the last Sunday in September; and also c. 19 by which Parliament extends its own life until a day in 1918 to be determined by the government. A Food Control Board is formed by c. 18, with very extensive powers; timber for pit-props is allowed to be exported to non-enemy countries by c. 28.

A Currency Act (c. 35), largely a replica of that of 1895 (58 Vic., c. 5, Nfld.), provides for a new coinage and (*inter alia*) makes the American eagle coined after July 1, 1834, and the other American gold coins legal tender.

The Legislature held a second session at which two acts were passed: c. 1 to levy a tax on business profits and c. 2 which restricted the power of the Legislative Council (corresponding to an American State Senate or to the House of Lords) by rendering its consent unnecessary in money bills, the Speaker of the Assembly to determine what are money bills. Moreover any other public bill which passes the Assembly in three successive sessions becomes law notwithstanding rejection by the Legislative Council. This

act is based upon and contains much the same provisions as the well-known Imperial Act by which the teeth of the House of Lords were drawn (1911), 1 and 2 Geo. V, c. 13 (Imp.). Too much importance should not be attached to either act; the change is not much more than a change of rules of procedure, since the Parliament may at pleasure repeal the legislation and go back to the former practice.

W. R. R.

2. LATIN AMERICA.

ARGENTINA.

LEGISLATION.

Law No. 10069 (September 1, 1916) authorizes the Executive power to appoint an ambassador to Spain, in lieu of a minister.

Law No. 10072 (October 9, 1916) approves the Arbitration Convention with Spain signed at Buenos Aires, July 9, 1916.

Law No. 10073 (October 2, 1916) approves the Arbitration Treaty with France signed at Buenos Aires, July 3, 1914.

Law No. 10074 (October 5, 1916) approves the Convention as to Letters Rogatory with Chile signed at Buenos Aires January 9, 1903.

Law No. 10080 (October 5, 1916) approves the Convention as to Letters Rogatory with Peru signed February 10, 1910, at Lima.

Law No. 10081 (October 5, 1916) approves the Convention as to Letters Rogatory with Paraguay signed at Asuncion January 25, 1910.

Law No. 10219 (February 21, 1917) amends the *Inheritance Tax Law* (No. 8890); the new scale ranges from 1 to 20 per cent (art. 2).

Legacies to the national or state government or municipalities for hospitals or philanthropical or educational institutions are exempted (art. 3). Attempts to defraud the tax are punished by a fine of two to five times the amount of the tax that should have been paid, and all parties concerned are jointly and severally liable for the fine (art. 4). All persons having property in their possession belonging to a decedent are obligated to report, and may not deliver or transfer it

without a judge's order, under penalty of a fine of 3 to 10 times the value of the property (art. 5).

Interest at the rate of 4 per cent begins to run on unpaid taxes from one year after the death (art. 6).

Laws Nos. 10220, 10221, 10229, 10231, 10237, (February 21 and 28, 1917) amend the customs tariff.

Law No. 10223 (February 22, 1917) Budget Law. The total amount is $381,537,701 (Argentina pesos). Arts. 14 and 17 grant special authority to the Executive in regard to the oil fields of Comodoro Rivadavia. Art. 21 grants the Executive power to enter into reciprocity treaties with Paraguay and Brazil. Art. 40 prohibits in general holding more than one public office, whether national, state or municipal. Art. 44 prohibits experts and professional men receiving a salary from the nation, from collecting special fees for their work.

Law No. 10230 (February 28, 1917) repeals arts. 197 and 198 of the Rural Code.

Law No. 10232 (February 28, 1917) amends the Stamped Paper Law (*papel sellado*).

P. J. E.

Main Provisions of Bill to Authorize and Regulate the Merger of Stock Companies.

(Translation of article taken from *La Prensa*, Buenos Aires, August 23, 1917.)

The bill requires authorization at a special meeting of stockholders of each of the companies or corporations desiring to be merged. In order that any action taken thereat be binding, the presence is required of shareholders representing three-fourths of the capital stock issued, while any vote taken must be by two-thirds of such members present.

After this authorization for the merger has been effected, as provided in the foregoing paragraph, the representatives of the several companies shall present themselves in the *office for registration of stock companies,* and request that a record of the merger be filed. For this purpose they shall submit a duly authorized copy of the minutes of the meetings, at which the action was taken. They shall furthermore set forth the date on which each of the companies was authorized to begin operations and the date when its juridical personality was recognized; the capital stock

of each, both authorized and outstanding, whether any debentures have been issued, and if so, to what amount, and all other terms of the contract; the names of any creditors or debtors with the amount of each credit; the name of the newly formed stock company, its certificate of incorporation, by-laws and other necessary papers. Should there be no obligations outstanding, nor creditors nor debtors, and the newly formed company be governed by a charter and by-laws already approved pertaining to one of the merging companies, the Board of Inspection of Stock Companies shall, without any further requisites, order that record be filed of such merger. This authorization shall serve as sufficient warrant for the judicial authorities to decree recordation of the company in the respective register. Should any changes be introduced into the charter and by-laws, approval should be obtained as soon as the annotation of the merger has been made in the Board of Inspection of Stock Companies and before request for incorporation is filed in the commercial register. No merger of two or more stock companies shall be effected until one or more of them shall wind up its affairs and the assets and liabilities be taken over by the newly formed entity. Should the company or companies which it is intended shall go out of existence by the merger have any outstanding indebtedness, no merger shall take place before an agreement has been secured from the holders of such obligations. These holders shall be given 30 days, reckoning from the time when they are officially notified of the projected merger, in which to give their assent or refusal to such merger. If no reply shall have been received within 30 days above stipulated, it shall be understood that they have given such assent.

The bill contains other supplementary provisions.

The following addition to Article 3173 of the Civil Code of Argentina was presented by Deputy Martinez Zuiviria:

The debtor may likewise relinquish the hypothecated immovable if the *hypotheca* shall have been constituted as a guarantee for the payment of a part of the purchase price of the said immovable. In such event, the creditor may only demand either that a deed making the obligation binding be drawn in his favor, or that the immovable be sold. The corresponding expenses shall be borne by such creditor, and the debtor shall be released from any subsequent obligation.

C. E. McG.

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Dr. J. J. Hall: El Notariado. Obra teorica y practica para la redaccion de toda clase de Instrumentos publicos. Buenos Aires, 1916.

Pedro B. Baldasarre: Tratado teorico-practico argentino del derecho sucesorio. Mendozo, 1917.

Diccionario de Legislación Nacional y Provincial. Vol. VIII (P-R) of this compilation of national and state laws edited by Dr. Carette and others has now appeared.

Carlos C. Malagarriga: Codigo de Comercio comentado segun la doctrina y la jurisprudencia. Tomo II. Buenos Aires, 1917.

This second volume covers arts. 282 to 449 of the Commercial Code (partnerships and corporations, etc.). The commentaries also include the important debentures or bond issue law of 1912. The work is a valuable study in comparative law as well as of some use to the practitioner. There is a preface by Dr. Estanislao Zeballos and a useful bibliography.

Joaquin V. Gonzalez: La Propiedad de las Minas. Estudios legales y constitucionales relativos a la reforma del Codigo de Mineria. Buenos Aires, 1917.

Alfredo Colmo: Tecnica Legislativa del Codigo Civil Argentino. Buenos Aires, 1917.

Valuable for a historical study of the Civil Code; also contains minute observations on its phraseology and general drafting. The author concludes that no general reform of the code is needed.

Proyecto de Codigo Penal para la Nacion Argentina. Buenos Aires, 1917.

Under the above title, the Special Committee on Penal and Prison Laws of the Chamber of Deputies publishes its report, which includes not only the draft of the proposed new penal code, but also a valuable "exposition of motives"; the whole constituting an important contribution to the literature of criminology and criminal law.

R. S. Castillo: Curso de sociedades comerciales. La Plata, 1916.

Carlos C. Malagarriga: Apuntes de derecho comercial, 2d ed. Buenos Aires, 1916.

Leyes Nacionales sancionadas por el Congreso Argentino durante el Periodo Legislativo de 1916. Buenos Aires, 1917.

Fallos de la Corte Suprema de Justicia de la Nacion. Vol. CXXIV. Buenos Aires, 1916 (appeared in 1917).

Felix Martin y Herrera: Estudios sobre Legislación de la Quiebra seguidos de otros ensayos. Buenos Aires, 1917.

Americo S. Cacici: De la extraterritorialidad de la persona juridica. Buenos Aires, 1917.

Pedro E. Martinez, Emilio Reviriego y Agustin Redoni: Codigo de Procedimientos en lo Civil y Comercial. Parana, 1917.

Carlos C. Malagarriga: Codigo de Comercio Comentado. Tomo I. Buenos Aires, 1917.

Julio A. Quesada: La Soberanía Nacional en las Provincias. Buenos Aires, 1917.

Nicolas V. Greco: La Ley 4687 sobre ejercicio de la farmacia y su reglamentación. Buenos Aires, 1917.

JURISPRUDENCE.

CONSTITUTIONAL LAW.

A strike took place in the city of Rosario, during the course of which the plaintiff company's property was damaged. The plaintiff sought to hold the state (province) government liable because of failure to furnish police protection. *Held:* A public lighting concession granted by a municipality is *res inter alios acta* as far as the state (province) is concerned and the obligations therein contained on the part of the municipality to furnish police protection do not create any liability on the state, in view of the provision of the state constitution that "municipalities are independent of every other power in the exercise of their own administrative functions." Cia. de Gas del Rosario *vs.* Provincia de Santa Fé. Supreme Court, November 25, 1916. Fallos de la Corte Suprema, Vol. 124, p. 315.

The states as judicial entities are incapable of committing delicts or quasi-delicts and are not liable for damages resulting from acts, even of omission or negligence, on the part of the state authorities during strikes partaking of the nature of revolutionary disturbances, but the public officers guilty of breach of duty are alone liable. *Idem.*

The responsibility of the government which may emanate or be derived from the constitutional provision which declares that private property shall be inviolable cannot be invoked to make the state liable for fortuitous events, such as excesses committed during a strike of revolutionary proportions. *Idem.*

The states (provinces) are not liable for damages due to the unlawful acts of state employees where there is no contractual relation between the state and the plaintiff. Cardoso *vs.* Province of Buenos Aires. Supreme Court, August 26, 1916. 124 Fallos C. S. 16.

The nation cannot be sued unless claim has been submitted to the Executive and denied, as required by art. 1, of law 3952. Without the consent of Congress, the suit cannot be brought against the nation on the ground of unconstitutionality of a law passed by Congress, because the sanctioning of the law is an exercise of the inherent rights of sovereignty and the nation is not then acting as a private person, in which character, alone, it can be sued. Mazza *et al. vs.* Fisco Nacional, Supreme Court, August 31, 1916. 124 Fallos C. S. 39.

The consent of Congress is not required in order to bring suit against the nation for personal injuries sustained while working in the customs warehouse. The nation hiring men for such work is acting as a civil law person and not as a public power. Hurtado *vs.* Gobierno de la Nacion. Supreme Court, November 30, 1916. 124 Fallos 329.

Art. 10, title 4, chap. 1, of law 4707 exempting military pensions from attachment is not a violation of the principle of equality consecrated by art. 16 of the constitution, which is simply a guarantee that there shall not be established any exceptions or privileges in favor of some which are, under equality of circumstances, denied to others. Santoro *vs.* Frias. Supreme Court, September 28, 1916. 124 Fallos 122.

Art. 132 of the constitution of the state (province) of Santa Fé and art. 14 of the municipal law thereof, prescribing that in no case can municipal revenues or property be levied on under attachment or execution, are in violation of art. 31 of the national constitution, inasmuch as they try to exempt municipalities from the ordinary process of the courts; when the municipalities act as juridical persons they are, under the national constitution,

subject to the provisions of the National Civil Code. Cia. Alemana de Depositos de Carbon *vs.* Municipalidad de Santa Fé. Supreme Court, December 7, 1916. 124 Fallos C. S. 379.

A law regulating private pawnshops is not in violation of the constitutional guarantees of liberty of work and right to carry on trade given by art. 14 of the constitution, but is a proper exercise of the police power. People *vs.* Frery, Supreme Court, December 9, 1916. 124 Fallos 395.

The interpretation and application of the constitution, laws and decrees of a state (province) and the decision as to whether laws or decrees are in violation of the state constitution are vested exclusively in the state courts, and the Supreme Court has no jurisdiction in regard thereto, other than in the exceptional cases of art. 14, law 48. Fiscal de Santiago del Estero *vs.* Ruiz Vargas, Supreme Court, October 26, 1916. 124 Fallos C. S. 214.

The constitutional guarantee of liberty of industry must not be construed to interfere with due exercise of the police power by measures for health, morality, etc. Gatte *vs.* Doyhenard, Supreme Court, September 21, 1916. 124 Fallos C. S. 75 (case of milk inspection).

P. J. E.

BOLIVIA.

LEGISLATION.

Law of September 4, 1916, amends art. 472 of the Code of Civil Procedure by adding an exemption of cemetery property from attachment.

Law of September 16, 1916, amends arts. 100 and 102 of the Penal Code.

Law of September 29, 1916, amends art. 572 of the Civil Code (validity of testamentary disposition).

Law of October 10, 1916, makes it obligatory on railway companies to grant use of their lines to connecting railroads.

Law of October 19, 1916, repeals art. 8 of law of April 11, 1900, *re* mining grants.

Law of October 19, 1916, amends arts. 211 and 233 of the Judiciary Law.

Law of November 8, 1916, authorizes the Executive power to prolong the moratorium.

Law of November 14, 1916, orders publication of the decisions of the Supreme Court, opinions of the attorney-general and judgments of courts of first instance, in a new official periodical to be known as *Gaceta Judicial de Bolivia.*

Law of November 22, 1916, prescribes that the National Congress shall convene in regular session on August 6 of each year, and that the President and Vice-President of the Republic shall take the oath of office on August 15, at 2. P. M.

Law of November 22, 1916. Special penal law, defining, punishing and prescribing the procedure for the crime of stealing cattle and other animals (*abigeato*).

Law of December 2, 1916, on *Industrial Privileges* (patents). Every duly patented industrial discovery or invention is the exclusive property of the inventor, his heirs and legal successors for the time and under the conditions prescribed by this law (art. 1). Arts. 2 and 3 define patentable discoveries and inventions. Chapters II, III and IV prescribe the procedure for obtaining patents. The government does not by the issuance of a patent guarantee the reality, merit or novelty of the invention, but the patent is merely presumptive evidence of the legality of the inventor's rights until the contrary be proven (art. 11). Foreign patentees can obtain confirmation of their rights in Bolivia by the same procedure as is required for domestic patents (art. 14). Applicants for patents in foreign countries are granted priority rights in Bolivia for a period of one year (art. 15). Bolivian patents for inventions previously patented abroad expire at the same time as the foreign patent, but not exceeding a maximum period of 15 years (art. 33). Chapter V defines the effect of patents. Partial or total assignment or license is permitted, but must be by public instrument noted in the records of the Patent Office, Department of Industry (arts. 40 and 41). If the patent is not used in Bolivia within two years after its date, the Minister of Industry may grant licenses under a prescribed procedure (arts. 42 and 43), one-half the net profits made by the licensee being payable to the owner of the patent semi-annually (art. 44). Chapter VI (arts. 46-56) prescribes annual patent fees: 20 bolivianos the first year and increasing 10 bolivianos

annually. The fees for the period of duration of the patent may be paid in advance with a 25 per cent discount (art. 59). Chapter VII (arts. 51-59) prescribes the duration of the patents. If not used within two years, a patent is subject to forfeiture (art. 51), but the period may be extended by the Department of Industry for cause. The period of duration of a patent is 15 years from its date (art. 59) and is not renewable (*id.*). By Chapter VIII (arts. 60-62) patents may be expropriated for public use by due process with compensation, or for purposes of national defense and kept as state secrets. Chapter IX (arts. 63-71) contains provisions as to forfeiture and nullity of patents. Chapter X (arts. 72-80) contains the law as to infringements: Criminal penalties are imposed, as well as confiscation of infringing articles, machinery, etc. Chapter XI (arts. 81-86) creates a Patent Office as a bureau of the Department of Industry. Chapter XII (arts. 87-90) prescribes miscellaneous provisions. The law took effect January 1, 1917 (art. 90).

Law of December 12, 1916, reduces the annual fees for grants of petroleum, coal and sulphur mines (art. 1), reserves to the state a participation of 10 per cent in the gross product thereof (art. 2) and prohibits future grants of oil lands which hereafter are to be the exclusive property of the state (arts. 3 and 4).

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P. J. E.

BRAZIL.

Although the national Congress of Brazil has been in practically continuous session since the outbreak of the "world conflagration" kindled by the criminal hand of the Kaiser, there has been a great dearth of legislation of a general interest or of such character as to furnish material for a study of comparative legislation. Due to the financial crisis precipitated by the war upon many of the countries of the world, and which has been peculiarly acute in Brazil, the Brazilian Congress has been

mostly concerned in measures to meet and solve the fiscal problems of the country, to the nearly total exclusion of general legislation of a progressive character. However, the first enactment at hand for this contribution is one making a reduction in the income tax upon the salaries and pensions of the civil list of the republic.

Decree No. 3343, of September 26, 1917 (Diario Oficial, September 28, 1917), fixes the following rates upon official compensations: upon the salaries of the President of the republic, the Ministers of State, and Senators and Deputies in Congress, 10 per cent; upon the salary of the Vice-President, 4 per cent; on other official salaries generally and pensions, of from 100$000 to 300$000 (milreis) monthly, 2 per cent; from 300$ to 1:000$000, 4 per cent; over 1:000$000 monthly, 7 per cent; on salaries, wages, daily pay, and all other income of operatives, workmen and laborers of the federal government, over 100$000, 2 per cent; on civil and military pensions over 100$000, 2 per cent.

Decree No. 3361, October 27, 1917 (Diario Oficial, October 27, 1917), "recognizes and proclaims the state of war initiated by the German Empire against Brazil, and authorizes the President of the republic to adopt the measures recommended in his message of October 25th inst., and to take all the measures of national defense and public security which he may judge necessary, opening the necessary credits and carrying out the financial operations proper to that end." This decree is signed by the President and all the Ministers of State of the republic.

Law No. 3393, November 16, 1917 (Diario Oficial, November 17, 1917), authorizes the government, from date to December 31, 1917, to declare, successively, the state of siege (or martial law), in those parts of the national territory, where the necessities and duties of the situation created by the war imposed by Germany, demand such measures, suspending thereby the constitutional guaranties in all such parts of the country. The Executive power is authorized to declare without effect, during the period of the war, all contracts and operations celebrated with enemy subjects, either individuals or companies, for supplies and public works of every kind, as well as all others which, in the judgment of the government, are considered injurious to the national interests. By

way of reprisals, the government is authorized to decree: that enemy subjects, their agents and administrators, and the holders, by any title, of effects and credits belonging to them, shall declare upon oath before the designated authorities, the nature and amount of all such goods, effects, and credits, under penalty of a fine of 50 per cent of the value not declared; the sequestration of all such goods, effects and credits, and all debts, deposits, etc.; the suspension of all commercial relations between natives and resident foreigners with enemy subjects, and the disability of the latter to sue, as plaintiffs, in cases affecting patrimonial rights, together with the suspension of the execution of any judgments rendered, in civil or commercial causes, in their favor; the suspension of the right to export any and all enemy property; the liquidation of enemy business concerns and enterprises; the internment in concentration camps or other places not common prisons, of enemy subjects, objectionable or suspected; the suspension of the right of naturalization, during the war, to enemy subjects; together with many other provisions of like character, of a nature similar to the provisions of the Trading with the Enemy Act of the United States. (See Decree No. 12,740, *infra*, putting into effect this law.)

Decree No. 12,716, November 17, 1917 (Diario Oficial, November 22, 1917), accordingly declared the state of siege to exist in the federal district, which is the district in which the capital Rio de Janeiro is situated, and in the states of Rio de Janeiro, São Paulo, Paraná, Santa Catharina, and Rio Grande do Sul, these being the southern states so largely colonized by the Huns, and designed as the nucleus of the dreamed-of Hunnish Empire of South America. To effectively balk this plot of Kaiserthum, this region was put under martial law and the constitutional guaranties were suspended, and the revolt of the Hun aborted as it did in the United States.

Decree No. 12,733, December 3, 1917 (Diario Oficial, December 6, 1917), authorizes the President to sign a convention with France for the use of 30 ships of the Brazilian Lloyd.

Decree No. 12,735, December 5, 1917 (Diario Oficial, December 6, 1917), continues in effect until December 31, 1919, the existing suspension of the redemption in gold of the monetary notes of the government, except with respect to the payment of interest on the external debt of the union.

Decree No. 12,740, December 7, 1917 (Diario Oficial, December 8, 1917), puts into effect, for the duration of the war the provisions of the Law No. 3393 (*supra*), under regulations to be adopted by the several Executive ministries. This decree, with the text of the law referred to, is republished in the Diario Oficial of December 19, 1917, on account of errors in the previous publication.

Decree No. 3424, December 19, 1917 (Diario Oficial, December 23, 1917), promulgates a resolution of the congress proroguing until March 1, 1918, the elections for Senators and Deputies in the Tenth Congress, which were to have been held on the first Sunday in February; this in order that said elections might take place on the same day as the election for President and Vice-President for the coming term of 1918-1922, and makes several administrative amendments to the Electoral Law of December 27, 1916, abstracted in the April, 1917, number of this JOURNAL.

Decree No. 3427, December 27, 1917 (Diario Oficial, December 29, 1917), authorizes the President to revise the Law No. 1860, of January 4, 1908, with respect to enlistments and military draft, such reform to be made upon the following bases: establishing the principle of a national army instead of a professional army; establishing the two divisions of a first line army and its reserve, and a second line army and its reserve; limiting the ages for service in the first and second lines and in auxiliary services; modifying and simplifying, as far as possible, the mechanism of enlistment, draft, etc.; revising the matters of exemptions and penalties; all this being brought into closer relation with the circumstances of the country and with national legislation and customs; establishing as an indispensable condition of becoming a public official or simple employee of the government, the possession and presentation of a certificate of being a reservist or of enlistment for service in the first or second line; enter into agreements with the state governments to the end of their adopting similar requirements for their public officials and employees. The federal government is also authorized to send officers of the army and navy, and of the sanitary corps, to accompany the French and allied armies and navies in their operations during the present war. (See Decree No. 12,790, *infra*, being the New Army Law.)

Decree No. 12,770, December 27, 1917 (Diario Oficial, December 30, 1917), authorizes the American Mercantile Bank of Brazil, of Hartford, Conn., to establish a bank and do business in the republic. The charter and by-laws of the company are published in extenso.

Law No. 3446, December 31, 1917 (Diario Oficial, January 1, 1918), and Law No. 3454, January 6, 1918 (Diario Oficial, January 8, 1918), form the annual budget of the government for the year 1918; the former estimating and fixing the general revenue of the republic for the year at 114.998:357$200 gold, and 428.435:000$000, paper, and that destined for special application, at 10.970:000$000, gold, and 19.978:000$000, paper, to be raised by the product of the several classes of duties, imposts, and excises established in the law. The latter law fixes the general expenses of the republic for the year in the sums of 84.456:084$444, gold, and 461.598:950$959, paper, to be expended by the several ministries as therein specified. The salary of the President is fixed at 120:000$000, and that of the Vice-President at 36:000$000. For many years there has been a large deficit in every annual budget, the general deficit amounting to a total of many millions of milreis. In addition to the general budget, there are infinite "special credits" authorized during the year, this being one of the most constant activities of the congress.

Decree No. 12,790, of January 2, 1918 (Diario Oficial, January 11, 1918), approves and puts into effect the revision of the Law of January 4, 1908, regarding the organization of the army, in respect to enlistment and draft. This decree consists of 10 titles, 18 chapters, and 138 articles. Briefly summarized, the salient features of the law are: Every Brazilian is obliged to military service, in accordance with Art. 86 of the Federal Constitution, such service to be rendered either in the army or in the navy. The term of service in the army shall be: In the first line, 9 years, from 21 to 30 years of age; in the second line, 14 years, from 30 to 44 years of age. In time of war, service above the age of 44 years and to a limit of age to be determined by the circumstances of the case, service in the army will be different from that of the first and second lines, and in accord with the physical conditions of each individual. Service in the

army is prohibited to individuals deprived, according to law, of the rights of Brazilian citizenship; to those who, before their incorporation in the army, have been convicted of crime under the provisions of Art. 46 of the Military Penal Code; those condemned for other crimes involving a penalty of more than two years of prison. The first line army is divided into the active or permanent army, and the reserve; the former is composed of: the effective officers of all arms of the service and of the personnel of the auxiliary services; of cadets (aspirantes); of sergeants and similar petty officers; of pupils of military schools; of volunteers; of enlisted and re-enlisted men; of conscripts. The reserve is composed of reserve officers and petty officers, and of the citizens from 21 to 30 years completed, other than those in service with the colors. The police brigade and corps of firemen of the federal district, and the militarized police forces of the states, constitute the auxiliary forces of the active army. The second line army is composed of the national guard and its reserve. At the end of the nine years of service in the first line army, the citizen passes to the army of the second line, where he shall serve for 11 consecutive years, of which two years will be in the national guard, and seven in its reserve. The second line army will only be mobilized under the circumstances prescribed in the Federal Constitution, and according to plans to be formulated by the general staff. Regulations are to be issued for the organization and recruiting of the second line army.

J. W.

CHILE.

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P. J. E.

COSTA RICA.

1. A new constitution was adopted during the year 1917. This constitution is practically the same as the old one.
2. By decree of June 23, 1917, banking institutions of issue were authorized to issue bills of two and one colones and of 50 centimos of a colon, convertible in gold in parts of five colones, according to the banking laws and by contract of March 7,

1917, between the Minister of Hacienda and the banks. The Executive power was authorized to limit and to prohibit the conversion of silver certificates so as to prevent speculations.

3. By decree of July 16, the Executive power was authorized to make a loan represented by bonds up to the sum of 2.500 colones, guaranteed by the revenues of the post-office, telegraph, stamped paper, stamps, but this has not been put into execution.
4. By decree of July 23, there was established a duty on the exportation of coffee of $1.50, American gold, for every 46 kilos.
5. By decree of September 17, 1917, the government was authorized to coin silver of 50, 25, 10 and 5 centimes of a colon in the amount necessary for circulation. The same law authorizes the issue of copper and nickel coins of 10 and 5 centimos in an amount not exceeding 10 per cent of the silver coin.

All of these laws were considered emergency measures and have been dictated by the seriousness of the situation in Costa Rica, where the national revenues have been greatly reduced by the European war and other local conditions.

L. C. Q.

CUBA.

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HONDURAS.

During the year 1917, the National Congress of Honduras passed the following decrees:

1. Decree No. 70, prohibiting the exportation of silver bars from coins during the existence of the monetary crisis. All infractions shall be considered a fraud on the *Fisco*.
2. Decree No. 79, prohibiting judges of letters and justices of the peace from acting as notary public, except in the absence of a qualified notary in the locality.
3. Decree No. 114. Law of Concessions, stating manner of soliciting and obtaining industrial concessions, railroad concessions, mining concessions, colonization, banking and timber.

4. Decree No. 117, Law of Municipal Treasurers.
5. Decree No. 137, amendment of custom house tariff, increasing to $4 for each half kilo gross import duties of tobacco in leaf or manufactured.
6. Decree No. 144, amendments to the custom house tariff reducing to 10 cents for each half kilo for the importation of certain fruits and articles of first necessity.

The Supreme Court of Honduras recently decided that registrars of property are prohibited from inscribing deeds of transfer of land situated 30 kilometers from both seas, and those in which compliance has not been made with provisions of concessions in the Decree No. 50 of February 22, 1902, and in the agricultural law.

L. C. Q.

NICARAGUA.

Telegraph Franking Privileges.

1. All franking privileges over the telegraph and telephone systems of Nicaragua, to other than those as provided by law, are abolished.

Erasures in Bills of Lading.

2. The collector-general of customs of Nicaragua issued an order concerning the acceptance of bills of lading which provides that, from February 1, 1917, no bills of lading having erasures, interlineations, or alterations will be accepted, unless said erasures, interlineations, or alterations, have been duly certified by the agent or representative of the steamship company issuing the bill of lading in the port of procedure.

Legal Notices in Newspapers.

3. Congress has enacted a law making it unlawful to publish legal notices, titles, etc., in any newspaper other than the official gazette, except on the Atlantic coast, where such notices may be published in one of the newspapers of Bluefields.

American-Nicaraguan Commission to Investigate the Public Debt.

4. A law was passed by the National Congress, providing for the establishment of a commission, to be composed of a Nica-

raguan and of an American, for the purpose of investigating the public debt. In case of a disagreement between the commissioners, a third commissioner is to be selected jointly by the Nicaraguan and American governments.

Amendment of the Jury Law.

5. The secretary of the department of justice has submitted to the consideration of the National Congress a bill providing for the amendment of the jury law by the establishment of a court of review for each district to which the decisions of the jury may be appealed in so far as their validity or invalidity are concerned. The proposed law prescribes that criminals charged with assassination and other grave crimes shall not be given their liberty until the decision of the higher court, as to the validity of the verdict, is known.

Clearance Law.

6. The clearance law now in force in Nicaragua exempts vessels flying the flag of any of the five republics of Central America, exclusively engaged in the coastwise trade of the Republic of Nicaragua and of traffic between Central America and Panamanian ports, from port dues and clearance and official fees, provided said vessels carry the national mails free of charge.

The Internal Debt.

7. According to a recent report of the deputy collector of customs of Nicaragua, the internal debt of that country at the present time is about $11,000,000, of which $6,300,000 is held by Nicaraguans and the remainder by foreigners. The commission of public credit, established in accordance with the law of February 14, 1917, will examine, classify and consolidate this debt by using the unexpended moneys remaining from the purchase of the canal option rights under the treaty with the United States and a reasonable amount of internal bonds. This commission will also make agreements with creditors when this method is necessary and is for the mutual advantage of both parties.

CORRECT VALUES IN EXPORT DOCUMENTS.

8. The collector-general of customs has instructed customs appraisors and liquidators in the maritime ports of the republic to see that correct values are noted in export documents in order that the same may be used in compiling the statistics of the exports of the country.

NEW AGRARIAN LAW.

9. The *Gaceta Official*, the official newspaper of the government of Nicaragua, recently published the full Spanish text of the agrarian law promulgated by the President of the republic, March 2, 1917.

NEW TAX ON WINES AND LIQUORS.

10. Under date of July 23, 1917, the collector-general of customs has issued a circular which provides that wines and liquors imported on and after July 1, 1917, shall pay customs duties in accordance with the law of June 20, 1917. All former laws and customs decisions that affect the appraisements and duties on wines and liquors are abolished by the law referred to, except those that are based on treaties or contracts.

IMPORT TAX REQUIRED ON GRAPE JUICE WHICH HAS BEEN CLASSED AS A NON-ALCOHOLIC BEVERAGE.

11. The collector-general of customs has rendered a decision classifying grape juice with other alcoholic beverages, such as cider, ginger ale, kola and lemonades, all of which are subject to an import duty of 4 cents, in accordance with section 1225 of the tariff law of 1908.

FINANCIAL PLAN.

12. The Congress has adopted a financial plan for the purpose of reorganizing and consolidating certain of its external and internal debts. As collateral to this plan agreements were signed on October 20, 1917, between the Republic of Nicaragua and (1) the corporation of foreign bond holders; (2) the National Bank of Nicaragua, Inc.; (3) Brown Bros. & Company, J. W. Seligman & Company and the United States Mortgage & Trust Company; and (4) Brown Bros. & Company.

W. S. P.

PANAMA.

Manufacture and Sale of Jewelry Without License Illegal.

1. A recent executive decree prohibits the manufacture and sale of jewelry in the state of San Blas without first obtaining a permit from the Governor of the commonwealth. Permits will be issued to responsible applicants for a minimum period of 18 months upon the payment of $60. Licenses thus obtained authorize their holders to manufacture and sell jewelry. Each licensed jeweler in the state referred to is required to use a duly registered distinguishing stamp or mark upon all his wares offered for sale within the territory covered by the license.

Storage of Explosives in Panama City Requires Mayor's Permission.

2. The President of the republic has approved the rules and regulations governing the storage of explosives and inflammable substances in the city of Panama. Under these new rules no new garages nor deposits of inflammable substances will be allowed in the federal capital without the written permission of the mayor of Panama. The Spanish text of these rules and regulations, consisting of 30 articles, are published in full in the *Official Gazette* of October 18, 1916.

Custom Duties Required on all Goods Bought by Private Parties from Commissaries in Canal Zone which Shall be Brought into City of Panama.

3. According to information published in the *Star* and *Herald*, a weekly bi-lingual newspaper of the city of Panama, the President of the republic has issued an executive decree, abolishing the custom of allowing certain private parties not concerned with the Panama Canal to buy supplies in the commissaries of the canal zone. In future, no one, except employees of the canal, will be allowed to purchase merchandise in the canal commissaries and bring same into the city of Panama without the payment of customs duties.

Bill—Accidents to Workmen.

4. A bill concerning *accidents to workmen* has been submitted to the consideration of the National Assembly.

LEGAL HOLIDAYS.

5. On November 25, 1916, a law was passed by Congress prescribing the following holidays during the year: January 1, Jueves Santo (the Thursday preceding Ash Wednesday), Good Friday, May 1, December 25, and Sundays.

IMPORTING OPIUM.

6. The importation of all forms of opium, not intended solely for medicinal purposes, has been made unlawful in accordance with a law enacted by the National Assembly on November 22, 1916.

THE TORRENS SYSTEM.

7. The Panama Association of Commerce has recommended that the Torrens System of Land Registration be adopted in the Republic of Panama.

FOREIGN COMPANIES DOING BUSINESS IN PANAMA.

8. Recent changes in the commercial code of Panama require foreign companies, doing business in the republic, to have duly authorized representatives stationed there. Such companies must also invest not less than $100,000 in real property or make a bank guarantee deposit of not less than $50,000. New banks cannot be started without the permission of the President, and all banks are required to maintain on hand in cash not less than 20 per cent of the amount of their deposits. The law requires commercial concerns to keep their books and conduct their correspondence in Spanish. Agricultural banks are exempted from the provisions of this law concerning the establishment of new banks.

THE NEW CODES.

9. An executive decree of June 5, 1917, prescribes that on and after October 1, 1917, the following National Codes, approved by law number 2 in 1916 will become operative, the Civil, the Commercial, the Penal, the Judicial, the Fiscal, and the Mining Codes.

CONSTITUTIONAL AMENDMENTS, *Inter Alia*, CAPITAL PUNISHMENT ABOLISHED.

10. A law has been promulgated amending the national constitution. One of the things prohibited in the amendments is

capital punishment in the republic. Provision is also made for the election for a term of five years, by a majority vote of the members of Congress, and of an attorney-general. The President and Vice-President are elected for four years by a direct vote of the people and, beginning with 1920, the governors of provinces and mayors of districts shall be elected for four years by popular vote.

EXPORTATION OF SILVER BULLION AND PANAMA SILVER COIN TEMPORARILY PROHIBITED.

11. The Panama press states that the government has decided temporarily to prohibit the exportation of silver bullion and Panama silver coin from the republic.

NEW CIVIL MARRIAGE LAW.

12. In October last the new civil marriage law became effective in Panama, under the terms of which the contracting parties are required to register their wedding with the state authorities, for which service a small registration fee is charged. While the religious ceremony may be performed in the church, or elsewhere, it is not necessary to establish the legality of the contract. Unless the registration referred to is complied with a church marriage is invalid.

PLACES HAVING FOREIGN NAMES, WHICH ORIGINALLY BORE INDIAN OR SPANISH NAMES, SHALL HAVE THE ORIGINAL NAMES RESTORED.

13. A recent decree of the government of Panama provides that all places in that republic now bearing foreign names, and which originally bore Indian or Spanish names, shall have the original names restored. Spanish names will be given to all other places not known under names originating in other countries. The department of education will assist in carrying out the provisions of this law and in the educational propaganda concerning the changes provided therein.

W. S. P.

PERU.

LEGISLATION.

Law No. 2244 (September 12, 1916) exempts from attachment or execution money or property given by mutual benefit societies to their members.

Law No. 2253 (September 26, 1916) amends the Habeas Corpus Law of October 21, 1897.

Law No. 2259 (September 29, 1916) prescribes rules for the sale or conveyance of commercial or industrial establishments. Publication of intention in an officially designated newspaper for a period of 15 days is required; creditors can present proof of their claims within 30 days thereafter, and the purchaser becomes liable jointly and severally with the vendor for debts so proven. If due publication be not made, the purchaser is liable jointly and severally with the vendor for *all* debts of the business incurred prior to the transfer, and attachments may issue against their property.

Law No. 2282 (October 14, 1916) provides for temperance education in the schools.

Law No. 2290 (October 20, 1916) amends the Workmen's Compensation Law (No. 1378).

Law No. 2323 (November 3, 1916) Highways Law. Roads are classified as national, departmental, provincial or district. Art. 12 prescribes procedure on condemnation.

Law No. 2402 (December 13, 1916) permits chattel mortgages on agricultural personal property, produce, cattle and timber (*prenda agricola*). Loans thereon can be made only to farmers and stockmen. The contract must be by public (notarial) instrument if the loan amounts to £50 or more, and must be recorded in the registrar's office, specifying in detail the property mortgaged. The debtor cannot make any contract whatsoever in regard to the property or remove the same without the consent of the creditor, except that he may sell upon payment of the loan. In certain cases of wilful default, criminal penalties are imposed on the debtor. Interest at a rate more than 4 per cent per annum higher than the current bank rate is prohibited. Subsequent mortgages of the realty do not affect the lien of the chattel mortgage.

Executive regulations in furtherance of the law were promulgated by the President under date of December 30, 1916.

Law No. 2404 (December 21, 1916) Prison Labor Law.

Law No. 2411 (December 30, 1916). A *Ship Mortgage* Law (*Hipoteca Naval*) of 56 articles. Art. 598 of the Commer-

cial Code is amended; merchant ships being deemed immovable property for the purposes of this law (art. 1). The mortgage must be constituted by public instrument or broker's note signed by both parties (art. 3) personally or by attorney. Special power of attorney is required (art. 4). All or a majority of the owners must concur (art. 5). The mortgage must be recorded in the mercantile registry (art. 14) and cannot be recorded unless the ownership of the ship has been previously registered (art. 15). Ships under construction may, with prescribed limitations, be mortgaged (arts. 5 and 16). If the mortgage be executed in a foreign country, to be valid in Peru it must be executed before the Peruvian Consul, inscribed in the consul's registry and noted on the certificate of ownership kept by the captain. The consul must transmit an authenticated copy to the mercantile registry. All other contracts abroad as to the ship must be under the same formalities (art. 17). Unpaid purchase price and mechanics' and furnishers' liens, unless recorded, are subordinated to the mortgage (art. 18 *seq.*). Mortgaged ships cannot be transferred without the consent of the creditor or payment of the amount due (art. 40). Credit and loan companies for the purpose of lending on the security of ship mortgages, with power to issue and sell bonds or *cedulas,* are authorized by the law (arts. 53 and 54). The ship mortgage is governed by the common law of mortgages when not in conflict with this special law (art. 56).

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P. J. E.

SALVADOR.

CONSULATE IN CHILE RAISED TO CONSULATE GENERAL.

1. The consulate of the government of Salvador in Valparaiso, Chile, was raised under a decree of November 18, 1916, to the rank of a consulate general.

CENTRAL AMERICAN CONGRESS.

2. The Salvadorian press states that the governments of Salvador, Guatemala, Costa Rica and Nicaragua have favorably received the invitation made by the government of Honduras to hold a Central American Congress to consider the political union of the five Central American Republics.

PARCEL POST CONVENTION WITH UNITED STATES.

3. The Executive power has approved a parcel post convention concluded in the city of Washington on July 27, 1917, between Dr. Rafael Zaldivar, envoy extraordinary and minister plenipotentiary of the government of Salvador near the government of Washington, and Mr. Albert S. Burleson, Postmaster General of the United States of America, in representation of their respective governments.

REGULATIONS CONCERNING AUTOMOBILES.

4. The Department of the Interior of the government of Salvador has printed and distributed in the republic the rules and regulations now in force concerning automobiles.

NEW RULES REGARDING POSTS AND TELEGRAPHS.

5. During 1916 new rules and regulations were adopted by the Department of Posts and Telegraphs. The postal money-order service was extended to the principal cities of the republic and the charges for telegraph service were modified.

JOINT STOCK COMPANIES IN SALVADOR.

6. There are at the present time operating in the republic of Salvador 72 joint stock companies, 47 of which are in Department of San Salvador, 11 in Santa Ana, five in Sonsonate, three in Ahuachapan, three in La Libertad, two in San Miguel and one in San Vicente.

MAXIMUM PRICE FOR CONSTRUCTION TIMBERS.

7. An Executive decree of June 22, 1917, established the maximum prices that may be charged in the republic for construction timbers. Persons who violate the provisions of the decree by selling at higher prices than the maximum established by law are subject to fines varying from 25 to 200 pesos (peso $0.586).

W. S. P.

SANTO DOMINGO.

By proclamation of November 29, 1916, the military forces of the United States through officers of the United States Navy and Marine Corps took over the government of the Dominican Republic and by Executive Order No. 1 of the Military Government of Santo Domingo, dated December 4, 1916, certain officers of the navy and marine corps were designated to fill the principal posts of the government. How great and far-reaching were the powers thus assumed by the United States Government will be seen by reference to the cases where such powers were exercised as cited in this article.

On the same date, November 29, 1916, a new constitution went into effect, enacted by "the constituted assembly under the invocation of God and by order of the people." One of the transitory articles of this constitution provided for a committee of government composed of the chief of the church, the then senator from the province of Santo Domingo and the then municipal president of the city of Santo Domingo. In spite of this committee the Executive power was actually exercised by United States Naval officers as aboved stated. Thus a rather anomalous situation was created, a supposedly free and independent people adopting a fundamental law which provided complete machinery for their own government from the moment of its adoption and this same people, at the same moment, passing under the governmental control of a foreign country.

In spite of this peculiar situation, a survey of the new constitution may be of interest. It is founded upon the idea of a popular civil, republican, representative form of government, participated in by all male citizens, the functions of government being classified as legislative, executive and judicial (Arts. 2, 12, 16). The right to vote is given to male citizens of 18 years and to those of any age who are or have been married. (Art. 11.)

The members of the Senate and the House of Deputies are elected by popular vote, each one having two alternates, these being the two persons receiving the next highest number of votes at the election. The alternates serve in turn in case of the death, resignation, removal or incapacity of the officer himself. All these are elected for a term of four years. Congress meets Feb-

ruary 27 in each year for a session of 120 days which may be extended an additional 60 days. (Arts. 17-33.)

The President has charge of the Executive power, is elected for four years by direct vote, and may not be re-elected for the succeeding term. The Vice-President is elected at the same time for the same term and may not be re-elected nor elected president for the succeeding term if he is called upon to exercise the Executive power during his first term. Any Dominican who has lived ten years consecutively in the country and who is between the age of 35 and 75 is eligible to election as President or Vice-President. (Arts. 50, 51.)

Fiscal matters are entrusted to a National Treasurer, elected by the senate for four years. (Art. 63.)

Justice is administered by the Supreme Court, consisting of a president, six judges and a procurator general, three Appellate Courts, and a Court of First Instance for each judicial district. The magistrates of the Supreme and Appellate Courts are elected by the Senate for four-year terms. The judges of first instance as well as the minor judges are chosen by direct popular vote, the former for four and the latter for two years. (Arts. 67-77.)

The country is divided into provinces composed of municipalities. The provinces are governed by a governor and a provincial council, chosen for two-year terms by direct vote. These councils may legislate on matters affecting the province which are not under the control of the nation on the one hand or the municipalities on the other. The latter are governed by a syndic and tam council elected for two years by direct vote. (Arts. 78-99.)

Electoral assemblies, composed of all registered voters, meet in each electoral district 90 days before the expiration of any term to fill all offices which will be vacant. (Arts. 100-105.)

The constitution may be amended by a two-thirds vote of both houses of Congress or by a two-thirds vote in each of at least two-thirds of the provincial councils, but the form of a civil, republican, democratic and representative government may never be changed. (Arts. 106-111.)

The function of the armed forces of the nation is to obey and not to deliberate, and therefore none of its members may vote.

(Art. 112.) Capital punishment is abolished. (Art. 114.) Export taxes are abolished. (Art. 116.) The relations of church and state as formerly existing are recognized and shall continue, inasmuch as a majority of the Dominicans profess the Roman Catholic Apostolic religion. The government must protect the church and respect its rights. No church property may be taxed or occupied for military purposes. (Arts. 119 and 120.) Paper money may not be issued. (Art. 121.)

Many of the early Executive orders of the Military Government referred to fiscal matters and to the duties of minor officials as well as to the punishments to be meted out for signing false receipts and other infractions of the law and regulations. But both before and after the election of native officials under the new constitution the American military officers found it necessary to issue decrees and orders relating to other than purely fiscal matters. For example, we find Captain Knapp, U. S. N., granting licenses to minors to marry and to attorneys to practice law and issuing exequaturs to consuls including those of our own country. On January 24, 1917, as head of the Military Government, he ordered all land titles to be filed for registration and when the filings were not made as rapidly as expected, on April 12, he required all land owners to immediately report the name, location, area and boundaries of lands claimed by them, pending the filing of formal title papers. He also, on March 10, 1917, established official time for the republic at 20 minutes ahead of Washington time. On March 15, he ordered a survey of all government propery and on March 20, 1917, he ordered the corporate life of all municipal councils to be continued and all members thereof to remain in office, continuing therein "at the pleasure of the Military Government."

The military commandant named consuls of Santo Domingo in other countries, approved ordinances of the municipal councils, enacted police regulations, created a claims commission, published regulations regarding the distillation of spirits and amended various laws and regulations.

So far as can be learned from the material available to the editors no new laws of general interest to foreigners were enacted during the past year, except as referred to above.

R. J. K.

URUGUAY.

LEGISLATION.

Executive Decree of January 17, 1917 (Diario Oficial 3322, February 5, 1917), new regulations on consular organization and fees.

Executive Decree of January 31, 1917 (Diario Oficial 3333, February 17, 1917), amplifies the regulations on diplomatic organization.

Diario Oficial 3360, March 24, 1917, includes message of the President transmitting project of law to amend the law of *attachments.*

Executive Decree of March 29, 1917 (Diario Oficial 3366, March 31, 1917), regulates hunting throughout the republic.

Laws of March 20, 1917 (Diario Oficial 3365, March 30, 1917), approve the conventions with Chile and Argentina for exchange professorships, and with Paraguay for the reciprocal recognition of degrees of secondary and preparatory schools.

Law of December 29, 1916 (Revista de Derecho, Jurisprudencia y Administracion February 15, 1917, p. 161), amends the law as to compositions with creditors. No composition is allowed if it does not provide for payment to unsecured creditors of at least 50 per cent within 18 months (art. 1). Compositions can only be granted to traders inscribed in the commercial registry and who keep duly authenticated books of account (art. 3 amending art. 1545 of the Commercial Code). Contracts for delivery of merchandise where more than 180 days credit is granted must be evidenced by negotiable instruments (art. 4). Art. 62 of the Commercial Code is repealed (art. 6).

TREATIES.

By message of February 16, 1917 (Diario Oficial 3333, February 17), President transmits to Congress for approval treaty with Brazil of general arbitration of all questions including matters of "vital interest."

Id., treaty with Brazil signed at Rio December 27, 1916, for demarcation in greater detail of boundary line.

Id., id., extradition treaty.

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Donations by Dr. Joaquin Secco-Illa; Acts of Commerce by Carlos Carbajal; The Second Constitutional Convention of Uruguay (1916) by Anibal R. Abadie-Santos; Recognition of a natural child after death by Dr. Rodolfo Sayagues-Laso.

JURISPRUDENCE.

From *Revista de Derecho y Ciencias Sociales,* 1917, Vol. 6., January–June, 1917. *Held:* Mental injury affecting plaintiff's earning power, resulting from an accident is a proper subject for damages (p. 64). Fallo 179 (December 23, 1916).

Fallo 10 (April 18, 1917). *Held:* Lost or stolen securities or instruments payable or issued to bearer cannot be reclaimed from a holder in good faith. The fact that the broker who intervened in the sale to defendant was not duly registered, held of no importance to rebut the presumption of good faith (p. 659).

Fallo 19 (April 25, 1917). *Held* stabbing could not be claimed as legitimate self-defense where the original aggressor was unarmed: the force used to repel attack must not be excessive (p. 681).

Fallo 24 (April 28, 1917). Failure to record dissolution of a partnership in the commercial registry could not be invoked by third parties, creditors, in order to hold retiring partners liable who continued business with the successor, under a composition agreement to which they were parties.

NEW URUGUAY CONSTITUTION.

A confirmatory plebiscite was held in November, 1917, at which the new Constitution was ratified by some 84,000 votes to 4000. It was promulgated formally on January 30, 1918, and comes into force on the change of government on March 1, 1919.

The salient points of the new Constitution may be summarized as follows: Secret ballot, compulsory registration, proportional representation, prohibition of police or military intervention in the electoral processes, a liberal and tolerant formula for the

separation of state and church, the creation of a council of state which takes over a large portion of the administrative power formerly vested in the President, election of the President by direct vote, reinforcement of the authority and independence of the Legislature, and the right of interpellation and municipal home rule.

P. J. E.

VENEZUELA.

LEGISLATION.

Law of May 21, 1917 (*Revista de Derecho,* p. 79), enacts a new law on co-operative societies, repealing the law of June 27, 1910.

Law of June 12, 1917 (*Gaceta Oficial,* 13169, June 13, 1917), on railroad concessions.

A new organic judiciary law was also enacted.

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In the *Revista de Derecho y Legislacion,* 1917, the following noteworthy articles appeared:

Relation of the judicial to the legislative power by Eduardo Rodriguez Pineres (of Colombia), paper presented to the Pan-American Scientific Congress; Teixeira de Freitas (father of Brazilian law), by Clovis Bevilaqua (reprint).

Alejandro Pietri, hijo: El Codigo Civil de 1916 y sus diferencias con el le 1904 e indicacion de los articulos correspondientes en este y en el de 1896. Caracas, 1917.

Also contains some notes on comparative law.

P. J. E.

3. EUROPE.

BELGIUM.

LEGISLATION, 1916-1917.

The legislation for the occupied territory of Belgium contained in the various decrees of the Military Governor for the period from the beginning of the war until June 1, 1916, was reviewed in Volume III, No. 2, of THE AMERICAN BAR ASSOCIATION JOURNAL. Since June 1, 1916, five more volumes of German legislation in Belgium have been received. (Series VII-XI, edited by Huberich and Speyer, The Hague, Nijhoff.)

The decrees are for the most part administrative in character. Many of these decrees relate to forced sales of special kinds of property belonging to the population of Belgium, delivery of which *en masse* to the military forces is made obligatory under heavy penalties. The decrees also relate to levies of money upon provinces, communes and banks; prohibitions in the use of foodstuffs, fuel and the like; regulations of a detailed economic character; police regulations; decrees regulating the separation of the internal administration of Belgium into two parts, Flemish and Walloon; regulations for school and university administration and the like. There are also legislative decrees affecting the property rights of aliens, alien "enemies" and Belgian non-residents. Some of the more important of this character are herewith translated.

Decree of August 29, 1916, Concerning Liquidation of British Enterprises.

Article 1. Liquidation may be ordered of all enterprises of which the capital invested belongs preponderantly to British subjects, or which are managed or supervised from British territory, or which were so managed or supervised at the outbreak of the war. The same applies to British participation in an enterprise. An enterprise in the sense of this decree includes also branch establishments, agencies, warehouses, estates in succession, as well as landed and all other property.

Jurisdiction to decree liquidation is delegated to:

1. The chief of administration on the staff of the governor-general in Belgium, in respect of enterprises operated industrially in Belgium, for dealing in goods or carrying on the business of insurance, and also in respect of warehouses and land or other property.

2. The commissary-general of banks in Belgium, in all other cases.

The consent of the governor-general must be obtained in advance of promulgating the decree.

Art. 2. The liquidation is to be carried out through a liquidator according to the general and particular instructions issued by the governor-general. The liquidator is to be appointed by the chief of administration of the governor-general in Belgium

in the cases covered by section 1, second paragraph, subdivision 1, and by the commissary-general of banks in Belgium, in the cases covered by section 1, second paragraph, subdivision 2.

Art. 3. The liquidator appointed for any enterprise shall place himself in possession of the enterprise. He alone is authorized to transact business in behalf of the enterprise. He may alien the enterprise as a whole.

The authority of the owner and of all other persons to transact business in behalf of the enterprise is suspended. The same applies also to the authority of all organs of the enterprise. If a liquidator is appointed for a British participation in any enterprise, he shall exercise the rights of the British participator; he is especially authorized to transfer the participation in the enterprise to third persons. In the case of a participation in a partnership or a limited partnership, the liquidator may proceed to wind up the business without according a period of delay.

In the event that the right of participation is fixed by the terms of a written instrument, the authority which has ordered the liquidation may provide that the enterprise shall execute a new document relating to the participation, instead of the old document which may be declared invalid by the liquidator.

Art. 4. The liquidator may demand the performance of obligations in respect of property, notwithstanding the provisions of the decree of November 3, 1914, relating to the prohibition of payment as against England; the prohibition of payment and the suspension of debt ceases one month after the liquidator offers to perform. Where the suspension of payment of a bill or note, the protest of which has been postponed pursuant to art. 4, subdivision 1, of the decree of November 3, 1914, ceases to be effective, by virtue of the preceding sentence, the protest of the bill and recourse thereon remains, nevertheless, suspended until further order. This provision applies analogously also to checks.

Art. 5. So far as concerns property under liquidation, art. 1 of the decree of May 5, 1916, concerning the property of alien enemies, does not apply so as to prevent action by the liquidator relating to such property.

Art. 6. Where facts relating to an enterprise justify the assumption that it falls within the category of art. 1 of this decree, the authority having power to order the liquidation shall have

the right to examine the books and writings of the enterprise and to demand information concerning the affairs of the business from the directorate and the owners and employees, as well as from all persons in a position to give information relating to the enterprise.

Art. 7. The enterprise shall bear all of the expenses caused by the liquidation. These expenses shall be deemed preferred claims. The proceeds of the liquidation, so far as they belong to British subjects, shall be deposited. The authority ordering the liquidation may permit payment to British subjects residing in Belgium of sums necessary for their maintenance.

Art. 8. The liquidator is exclusively responsible to the governor-general for all transactions entrusted to him.

Art. 9. British territory in the sense of this decree includes Great Britain and Ireland, together with the British colonies and foreign possessions, with the exception of Canada and the South African Union; the subjects of these countries together with all juristic persons organized according to British law shall be deemed to be British subjects.

Art. 10. Any person who intentionally withholds, in whole or in part, any property placed under liquidation pursuant to this decree, or is accessory thereto, and any person who intentionally withholds information demanded pursuant to art. 6 hereof, or knowingly or negligently makes untruthful statements in relation thereto, shall be punished by fine of not more than one hundred thousand marks, and by imprisonment for not more than five years, or with one or both of these penalties. Attempts are also punishable.

The German military courts and the German military commander shall have jurisdiction to judge infractions of the present decree.

Decree of December 2, 1916.

Persons of British, French, Russian, Italian, Roumanian or Portuguese nationality and also juristic persons, associations and societies having their situs in Great Britain and Ireland, France, Russia, Italy, Roumania, or Portugal, or the colonies, foreign possessions and protectorates of any of these countries have no standing in Belgian courts to enforce property rights, and have no recourse to any other judicial organs in Belgium, particularly

the services of the marshal, for the conservation or effectuation of such rights.

(It is interesting to note in relation to the foregoing decree that the same is more drastic than the analogous legislation in Germany. The statute there does not prevent recourse in general for the protection of property rights of alien enemies, but only in so far as may be necessary to effectuate the moratory laws. See German Statutes.)

Decree of March 31, 1917.

Article 1. Enterprises having their situs within the occupied territory, but operating in whole or in part outside of Belgium, shall not sell, create any incumbrance upon, lease or transfer to third parties their business located outside of Belgium, or any land or any part of the plant or equipment, without the consent of the commissary-general of banks.

Enterprises domiciled within the occupied territory shall not sell, create any incumbrance upon or transfer participations (shares, partnerships, certificates of participation, etc.) either in foreign or in Belgian enterprises operating in whole or in part outside of Belgium, without the consent of the commissary-general of banks.

Every disposition contrary to the first or second paragraphs of this section shall be void.

Art. 2. Any person who violates the provisions of art. 1 or assists in any violation thereof is punishable by imprisonment for not more than five years, and by a fine of not more than one hundred thousand marks, or by either one of these penalties. Attempts are also punishable. The fine may also be recovered from such concerns, persons and property, the representative or administrator of which has been guilty of the offense. The military commanders and military courts shall be deemed to have jurisdiction to punish infractions.

Decree of April 15, 1917.

The provisions of the decree of August 29, 1916 (reported above in full), concerning the liquidation of British enterprises are, by way of retorsion, declared to be applicable to:

(a) Enterprises of which the capital invested belongs in major part to French subjects;

(b) To enterprises of which the management or supervision is located in France, either presently or at the time of the outbreak of the war;

(c) To all French participations in enterprises;

(d) To all property rights of French subjects.

Decree of April 22, 1916, Concerning the Protection of Aliens through the Courts.

Article 1. The decree of September 25, 1914, is repealed. The courts and tribunals of Belgium shall not render any decrees, judgments or ordinances against aliens who by reason of the war are prevented from protecting their rights. This provision does not apply to subjects of nations in a state of war with the German Empire.

The courts and tribunals of Belgium may not take jurisdiction of or decide cases or claims of any nature brought against members of the German, Austro-Hungarian, Turkish or Bulgarian armies. Officials of the German authorities in Belgium are considered as forming part of the German army.

Art. 2. English, French or Russian subjects as well as juristic persons, associations and societies having their situs in England, France or Russia, or the colonies of these states, may not effectuate any property rights before the Belgian courts, nor insure the protection or realization of these rights with the assistance of Belgian judicial organs, particularly of the marshal. The courts may not take jurisdiction of nor decide such rights; the organs of justice shall not take any part in insuring their protection or realization.

The provision of the first paragraph of this article does not apply to persons permanently residing in Belgium, so far as concerns claims arising out of the regular course of business conducted in Belgium.

The provision of the first paragraph applies also to the legal successors of persons mentioned therein in the event that the claims were not acquired prior to October 9, 1915.

Art. 3. The provisions of arts. 1 and 2 apply also to such legal proceedings as may be already pending before a Belgian court or

judicial organ. In the case mentioned in art. 1, third paragraph, judgment or decrees of any nature already rendered, or any other procedure taken, shall not be further executed.

Art. 4. Exceptions may be allowed to arts. 1, 2 and 3 by the chief of administration of the governor-general in Belgium.

The chief of administration of the governor-general in Belgium may, in cases of emergency, appoint an administrator for the property of a member of the German military forces who is prevented from dealing with the same, and may regulate the rights and obligations of the administrator.

Art. 5. This decree is valid only for the Belgian territory under the control of the governor-general in Belgium; it takes effect upon the day of its publication.

Decree of May 5, 1916, Relating to the Property of Alien Enemies.

Article 1. The property in Belgium of alien enemies may not be sold, transferred or incumbered except with the consent of the commissary-general for banks in Belgium, saving, however, the right of the military commander to order otherwise.

Property in Belgium in the sense of this decree includes particularly also participation in an enterprise having its situs in Belgium, as well as property rights of all kinds against persons having their residence or situs in Belgium.

Rights of pledge or lien acquired prior to October 9, 1915, may nevertheless be exercised.

Art. 2. The prohibitions mentioned in art. 1 do not apply to transactions between persons permanently sojourning in Belgium where such transactions are undertaken in the regular course of a trade or industry, or the operation of a farm or forest, or for the satisfaction of the needs of daily life. . . . .

Art. 3. The property of alien enemies, especially securities, may not be sent out of the country directly or indirectly without the consent of the commissary-general of banks in Belgium, but this does not refer to baggage. The commissary-general of banks may make more detailed provisions as to what shall constitute baggage.

Art. 4. The broader provisions of the decrees relating to prohibition of payment against England and France, Russia and

Finland, of November 3 and November 28, 1914, as amended by the decree of August 12, 1915, as well as that against Egypt and French Morocco, of October 29, 1915, are not hereby affected.

Art. 5. Enemy states in the sense of this decree are Great Britain and Ireland, France, Russia and Finland, Portugal, the colonies, protectorates and foreign possessions of these states, together with the British occupied territory of Egypt and the part of Morocco under French protectorate.

Belgian citizens shall be treated in the same manner as subjects of enemy states under the following circumstances:

(1) If they voluntarily quitted Belgium, after the outbreak of war and are now without the German Empire or Belgium; or

(2) If they have a domicil or sojourn in an enemy state, unless they are military persons or public officials who were obliged to leave Belgium in the performance of their duties.

Art. 6. Enemy states as well as juristic persons existing by private or public law, corporations and associations of all kinds having their situs or domicil in an enemy state shall be treated in the same manner as subjects of enemy states, unless none of the owners of the undertaking are subjects of an enemy state.

An enterprise located in a non-enemy state, all the owners of which are enemy subjects, shall be treated in the same manner as the subjects of an enemy state.

Art. 7. Persons found guilty of an infraction of the provisions of arts. 1, 2 or 3 of this decree or of being accessory to such infraction are punishable with imprisonment not exceeding five years and by fine not exceeding one hundred thousand marks, or by either one of these penalties. Attempts are punishable.

The military commander and military courts have jurisdiction.

Art. 8. The commissary-general of banks in Belgium is entrusted with the execution of this decree.

Art. 9. This decree is valid only for the Belgian territory of the governor-general in Belgium. It takes effect upon the day of publication, except that the provision of art. 3 shall take effect two days after the date of publication.

A. K. K.

GERMANY.

LEGISLATION, 1917.

Most of the German legislation passed during 1917 was of a purely temporary character, but a few laws may be of interest. They have enacted a law concerning the re-establishment of the German merchant marine (Reichsgesetzblatt, No. 201), and a comprehensive new postal code (Reichsgesetzblatt, No. 157). The potash law has been amended (Reichsgesetzblatt, No. 115), and several new amendments have been made to the Prize Code of 1909.

The emergency legislation contains numerous food regulations concerning grain, potatoes, meats, sugar, fruits, vegetables, flour, milk, eggs, etc., and regulations of food prices. Other regulations concern trade in oil and oil-producing fruits, artificial fertilizers, hay, straw, geese, saving of fuel, harvesting of crops, and seed for grain, beet sugar and potatoes. War taxes of various kinds have been levied. Provision has been made for sickness insurance during the war (Reichsgesetzblatt, No. 40), and for insurance of war emergency employees (Reichsgesetzblatt, No. 35).

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R. L. L.

GREAT BRITAIN.

It is easy to understand that the mind of the British Imperial Parliament continues to be fully occupied with problems arising out of the war. Much of the constructive legislation which has been approved since the last statute digested in this series deals with the creation of new executive departments for carrying on the complex work called for by the war.

The Ministry of Pensions Act, c. 65, 6 & 7 Geo. V, December 22, 1916, sets up a Ministry of Pensions and transfers to it the powers and duties of both the Admiralty and the War Council with respect to pensions. The act, however, gives no indication of the policy with regard to pensions which will be followed by Great Britain after the war. An interesting provision of the act not common to all the ministry acts is (Section 6): "The Minister of Pensions may sue and be sued, and may for all purposes be described by that name."

The New Ministries Act, c. 68, 6 & 7 Geo. V, December 22, 1916, creates four new departments. The first is a Ministry of Labor, which is given a permanent status. The other three are a Ministry of Food, a Ministry of Shipping and an Air Board, which are created for the prosecution of the war. In each case the act makes use of the excellent British legislative device of providing that the new minister shall have such powers and duties as may be transferred to his department from other existing departments by the authority of Orders in Council; this relieves Parliament from the burden of legislating as to all the details of the minister's duties and permits it to enact a more general grant of power with an indication of its purpose.

An unusual breadth of scope is contained in the act creating a Ministry of National Service, c. 6, 7 Geo. V, March 28, 1917. The act opens (Section 1): "For the purpose of making the best use of all persons, whether men or women, able to work in any

industry, occupation, or service, it shall be lawful for His Majesty to appoint a Minster of National Service under the title of Director-General of National Service, who shall hold office during His Majesty's pleasure." After this broad indication of authority the act provides for the transfer to the new officer of powers and duties as under the other acts.

An even broader conception is indicated in the New Ministries Act of 1917, c. 44, 7 & 8 Geo. V, August 21, 1917. Section 1 of this act provides: "With a view to promoting the work of organization and development after the termination of the present war, it shall be lawful for His Majesty to appoint a Minister of Reconstruction, who shall hold office during His Majesty's pleasure." Section 2 specifies that: "It shall be the duty of the Minister of Reconstruction to consider and advise upon the problems which may arise out of the present war and may have to be dealt with upon its termination, and for the purposes aforesaid to institute and conduct such inquiries, prepare such schemes, and make such recommendations as he thinks fit." It is provided that the office of Minister of Reconstruction shall cease to exist on the termination of a period of two years after the conclusion of the present war, or such earlier date as may be fixed by Orders in Council.

The Billeting of Civilians Act of 1917, c. 20, 7 & 8 Geo. V, May 24, 1917, deals with a problem which is beginning to rear its head in this country. It establishes a scheme by which accommodation can be provided in any locality for civilians employed on any work of national importance for the purposes of the present war. A central Billeting Board is created, at least two members of which must be women. This board passes upon applications for authority to select any locality for the billeting of civilians. The board is empowered to establish local committes in the places where billeting is to be enforced. The local committees are to put into effect the provisions of the act as to selection of accommodations and amount of accommodation and allocation of persons among the billets. Section 5 of the act contains some interesting provisions as to the relations between the persons billeted and the occupant of the house, for instance: "It shall be the duty of any person billeted in any premises under this act to observe such rules as to conduct as

may be laid down by rules of the board, and generally to conduct himself in such manner as to cause as little inconvenience as possible to the person on whom he is billeted." Again, no person billeted may leave his billet without giving either one week's notice or making payment in lieu of notice. Again: "If a person billeted under this act feels aggrieved as to any treatment in the billet he may complain to the local committee, who shall take the complaint into consideration, and, if satisfied of the justice of the complaint, shall take such steps as may be practicable to remedy the grievance." Finally, the act provides that the person billeted is personally liable for the sum payable as compensation for the billet, and upon his failure to make such payments the local committee shall pay the same and may then recover them by an order from the local court making the amounts payable a charge against the man's wages. The concluding clause of this act consists of those tell-tale words which describe the aloofness from the war of a part of the United Kingdom: "This act shall not extend to Ireland."

An amendment to the Munitions Acts, c. 45, 7 & 8 Geo. V, August 21, 1917, extends the power of the Minister of Munitions and of the various munitions tribunals set up under those acts to fix the rate of wages for labor done on munitions and to control the termination and making of contracts of employment in such work. An interesting provision is the following in Section 9: "No workman employed on or in connection with munitions work shall be discharged on the ground that he has joined or is a member of a trade union, or that he has taken part in any trade dispute, and if any employer discharges a workman on any such ground he shall be guilty of an offense triable by a munitions tribunal of the second class under the Munitions of War Act, 1915, and shall be liable to a fine not exceeding 10 pounds, and the tribunal may order that the whole or any part of the fine imposed shall be paid as compensation to the workman."

The Corn Production Act, c. 46, 7 & 8 Geo. V, August 21, 1917, fixes a minimum price for wheat and oats produced during the years 1917 to 1922 inclusive. It then goes on to create an Agricultural Wages Board with power to fix minimum wages for agricultural workmen of different classes, and with power to cancel or vary any minimum rate fixed. An even more important provision of the act is one forbidding the increase of any rent payable under

any contract of tenancy in respect to agricultural land in consequence of the provisions of the act. Finally, the Board of Agriculture and Fisheries is given power if in its opinion "Any land is not being cultivated according to the rules of good husbandry," or if "For the purpose of increasing in the national interest the production of food the mode of cultivating any land or the use to which any land is being put should be changed," to serve notice on the occupant of the land and on the landlord with a view to requiring the orders of the board with regard to the subject-matter to be observed.

The war has already begun to produce a number of acts relating to economic and business policy which will remain on the statute books when the war is over. The first of these is the Registration of Business Names Act, c. 58, 6 & 7 Geo. V, December 22, 1916. This act was adopted as a measure of defense against the wholesale changes of surnames which were being made by Germans or persons of German origin doing business in England after the outbreak of war. It provides that every firm carrying on business under a name which does not consist of the true surnames of all partners must register not only the true surnames, but also any former Christian name or surname and the nationality of origin of every partner. This also applies to any individual carrying on business under a name not his true surname. The act imposes not only a fine for a penalty for noncompliance, but also provides that any firm or person failing to register as required shall be under legal disability to enforce any right arising out of any contract made during the time the person is in default. The most irksome provision of the act requires every individual and firm which is obliged to register also to print in all trade catalogues, trade circulars, show cards and business letters the present and former Christian name or surname and the nationality of origin of every member of the firm. Another interesting provision of the act is that the registrar under the act may refuse to register any business name containing the word "British" or any other word which is calculated to lead to the belief that the business is under British ownership or control, if the registrar is satisfied that the nationality of the persons by whom the business is wholly or mainly owned or controlled is at any time such that the name is misleading.

Another act with regard to the use of a popular word in a trade name is c. 51, 6 & 7 Geo. V, December 18, 1916, which prohibits the use of the word "Anzac" without the permission of the proper authority. As is well known, this word is the abbreviation for "Australia and New Zealand Army Corps," which covered itself with glory in Gallipoli.

The Companies Act 1917, c. 28, 7 & 8 Geo. V, August 2, 1917, extended the registration of former Christian and surnames and nationality of origin to the directors of corporations and imposed a similar requirement as to letter-heads and advertising matter used by the corporation.

The most important single act having no connection with the war is the Larceny Act of 1916, c. 50, 6 & 7 Geo. V, October 31, 1916. This act codifies the entire substantive law of larceny and is the first fruit of the distinguished commission working under the leadership of Sir Mackenzie Chalmers to codify the entire substantive criminal law. The act carries a repeal of 16 acts previously dealing with the whole or parts of the subject of the law of larceny.

Another act dealing with criminal procedure which was passed because of the war, but will undoubtedly influence the law when the war is over, is c. 4, 7 Geo. V, March 28, 1917, which provides for the suspension of the use of grand juries during the continuance of the present war and for a period of six months thereafter. Under the flexible rule-making power, which was extended to criminal procedure by the Indictments Act of 1915, the rule committee under that act is given power by this act to make any necessary rules for carrying the suspension of grand juries into effect.

A similar act, c. 19, 7 & 8 Geo. V, May 24, 1917, provides for reducing the number of jurors in any coroner's jury from 12 to 7, and from 23 to 11, respectively.

An addition to the Courts (Emergency Powers) Acts, c. 25, 7 & 8 Geo. V, July 10, 1917, confers power upon the civil courts to suspend or annul building contracts entered into before the war if the war has interfered with their completion, and to grant relief for the non-fulfilment of any other contract where its fulfilment has been rendered impossible by reason of interference by any department of the government in connection with the war.

S. R.

HOLLAND.

A Political Prosecution.

While the Dutch Government has used every effort to preserve the neutrality of the country the inhabitants of Holland are far from being "neutral in thought."

The *Telegraaf* stands in the first rank of the newspapers which are strongly pro-ally. In June, 1915, that paper published an editorial article of which the following are the most salient passages:

"In Central Europe there is a group of conscienceless scoundrels who have brought about this war. In the interest of humanity, of which our country, if we are not mistaken, forms a part, it is necessary that these criminals should be suppressed. To do this is the honorable task of the allies. They fight for the most important Dutch interest, our independence, which is irrevocably lost if German militarism is victorious. Our fight is against these criminals."

Criminal proceedings were at once brought against the editor of the paper, Mr. Schroeder, who admittedly was the author of the article. He was indicted under Section 100 of the Penal Code which is directed against "any one who, during a war to which Holland is not a party, intentionally does an act by which the neutrality of the country is endangered." Prosecutions have been had during this war under this section, but in every case the act in question was one which was unlawful according to International Law; for instance, organizing a regular service to give information to Germany, as to the dates of sailing of allied vessels and of their cargo so as to enable Germany to torpedo them. Convictions were had in some of these cases while in others the defendants were acquitted on the ground that only information was given which in no way could tend to endanger the safety of such vessels.

It was urged on behalf of the defendant in this case that the neutrality of the state can only be endangered in a legal sense by official acts or by such acts of private persons as are prohibited by International Law. Such acts of private persons endanger the neutrality of the state because, unless they are at at once repressed and punished, the belligerent against whom they are directed may hold the state in which they are committed responsible and as the question whether sufficient diligence has been used in such

prosecution is one on which in good faith different opinions may be held, there is danger that the offended belligerent will consider that there has been a breach of neutrality. But if no act has been committed forbidden by International Law, no belligerent has a right to complain and there can therefore be no danger to neutrality within the meaning of the section.

The Tribunal of Amsterdam acquitted the defendant and the Appellate Court of Amsterdam affirmed this decision substantially on the ground set forth.

The Court of Appeals, however, reversed the judgment on the ground that any intentional act which, as a matter of fact, creates a danger to the neutrality of the state, irrespective of the question whether such act was prohibited by International Law or whether a belligerent could rightfully resent it, fell within the statute. The court sent the case to the Appellate Court of The Hague for a decision on the merits. At the same time it handed down a decision in another case against the same defendant in which it held that it was not enough in order to constitute such danger that there was a possibility that the act might cause hostile action by a belligerent, but that there must be a certain degree of probability; that it must be found, in other words, on grounds based on experience that it is reasonably clear that the incriminated act will lead to such result.

The Court of the Hague, however, disregarding this decision, held that it was enough that such result was not, as it put it "unthinkable" and it held that the article fell within the prohibition of the statute; the defendant was sentenced to three months imprisonment. On appeal the Court of Appeals adhered to its former decision and as the court below had not found, as a matter of fact that, within the principle laid down by the highest court, danger to neutrality was actually caused by the incriminated article, it reversed the judgment of conviction and sent the case to the Appellate Court of Bois le Duc.

The reports at hand go only as far as October, 1917, and it does not appear from them what the finding of that court has been. Anyhow, it is of comparatively little legal importance what the decision will be. The question how far a powerful belligerent will go in holding a small state responsible for the acts of private individuals, which in no way offended against International Law,

and which it has not legally the right to resent, is not a legal one; it is a question of might, not of right. Even if the defendant is finally acquitted, the fact remains that the Court of Appeals has, by its decision, practically surrendered the right of the state to punish its citizens only for acts which, in its opinion, offend against the law of the country. The culpability of the defendant, according to this decision, depends not on the inherent character of the act committed, but on the question how far a belligerent to whom the act is displeasing will go in holding the state responsible for it without a shadow of right and in violation of all principles of International Law.

France and England could be attacked by the press with impunity, because they believe in a free press and respect the law. Germany cannot be criticised because in its opinion a government which does not "muzzle" the press fails in its duty and such failure by itself might be considered as a breach of neutrality.

It was pointed out that under this decision, even an act done with the noblest of motives might fall within the statute. If Germany, for instance, demanded a free passage of its troops across Holland and threatened to declare war if such request were denied, the Cabinet Minister, who would refuse indignantly to grant such permission, certainly would intentionally commit an act by which the neutrality of the country was endangered and it would become the duty of a Dutch Court of Justice to sentence him to prison.

The decision of the Court of Appeals has been quite generally attacked even by persons who have no sympathy for the opinions expressed by the accused.

It can easily be understood that Holland will go very far to avoid being implicated in the war, but the question may well be asked, whether neutrality which can only be preserved by such means is worth preserving?

A. L. P.

RUSSIA.

Legislation, 1917.

The Russian revolution opened an era of intensified legislative activity in Russia which under normal conditions would have required the work of a generation. The whole legal fabric of the former empire had to be reconstructed in accordance with

the most advanced ideas of modern jurisprudence. The Revolutionary Government could not continue the enforcement of the laws inherited from despotism. The pressing needs of the people could not wait until the opening of the Constitutional Convention, which of necessity required a great deal of preparation. A number of commissions were accordingly created to prepare a series of provisional decrees which were from time to time promulgated by the authority of the Provisional Government, subject to ratification, amendment or repeal by the Constitutional Convention. This was no novel method of legislation in Russia. Under section 87 of the act by which the Imperial Duma was created, the Cabinet was given authority to enact temporary laws in the interim between the sessions of the Duma; these laws took effect immediately, subject to confirmation, amendment or repeal at the next session of the Duma. The Provisional Government, which succeeded the Cabinet of the Czar, proceeded in the same manner.

The volume of legislation thus enacted during the first period of the revolution, from the establishment of the first Provisional Government on March 16, 1917, until November 7, 1917, when that government was overthrown by the Bolsheviki, is so large that it would far exceed the space available for the present review. Moreover, owing to the irregularity of mail connections with Russia, a complete file of Russian official documents from the beginning of the revolution is not available. The writer gratefully acknowledges his indebtedness to Mr. A. J. Sack, Director of the Russian Information Bureau, who has placed at his disposal the files of that bureau.

ORGANIZATION OF THE PROVISIONAL GOVERNMENT.

After the overthrow of the government of the Czar by the revolutionary people of Petrograd, the Duma met in special session on March 12, 1917, and elected a Provisional Committee with authority "to create a new government corresponding to the wishes of the population and capable of enjoying its confidence." The committee was desirous to preserve the appearance of legality of the change. Accordingly, the Czar was made to execute an act of abdication whereby he renounced for his minor son the title to the throne and appointed Grand Duke Michael his successor. This act was signed at Pskov on March 15. On

the next day, however, Grand Duke Michael signed an act whereby he declined to accept the throne unless "such shall be the will of our great people, who shall by universal suffrage, through its representatives in the Constitutional Convention, determine the form of government and the new organic laws of the Russian state." Pending such determination, he enjoined "all citizens of the Russian nation to obey the Provisional Government, organized by the initiative of the Imperial Duma, and vested with all the fulness of authority until the Constitutional Convention, called as soon as possible, on the basis of universal, direct, equal and secret suffrage, will by its decision, concerning the form of government, express the will of the people."

Thus the first Provisional Government ostensibly derived its power from the sovereign act of the Czar of Russia. All subsequent changes in the personnel of the Provisional Government were effected through voluntary resignation of some of its members, the vacancies being filled by appointment made by the remaining members of the Provisional Government.

This line of succession was broken by the Bolsheviki who overthrew this quasi-legitimate government on November 7, 1917, and avowedly assumed power by an act of revolution against legally constituted authority.

Shortly before its overthrow, the Provisional Government, presided over by Kerensky, proclaimed Russia a republic, without awaiting the action of the Constitutional Convention.

The Fourth Imperial Duma, which had been elected in 1912 for a five-year term, was to continue in authority only until the fall of 1917. During the disorders which culminated in the revolution, the session of the Duma was adjourned by the Czar subject to his order. The special session at which the above-mentioned Provisional Committee was organized was called without authority in law. The Duma was never recalled into session by the Provisional Government which succeeded the Czar. The Bolshevik Government declared it formally dissolved, at the time when its term of office had expired by operation of law.

POLITICAL AMNESTY.

One of the first acts of the Provisional Government was the proclamation of amnesty for all political offenders. (Act of March 19.)

EXECUTIVE CLEMENCY FOR COMMON OFFENSES.

The act of amnesty for political offenses was followed by the reduction of the terms of punishment or complete suspension of sentences for common offenses. This was in obedience to an ancient custom of Russia by which it is meet for every new government to inaugurate its rule by an act of clemency towards offenders against the law.

ABOLITION OF CAPITAL PUNISHMENT.

By the Act of March 25, ten days after the abdication of the Czar, the Provisional Government abolished capital punishment. This act, however, was short-lived. Three months later, capital punishment was restored for the army and navy. The Bolshevik Government again repealed it even for the military.

ABOLITION OF EXILE TO SIBERIA.

By the Act of May 9, 1917, deportation to Siberia as a punishment has been abolished. For half a century the peaceable population of Siberia protested in vain against the exile system, which dumped annually upon the rural districts of Siberia scores of thousands of convicted criminals. As no provision was made by the government for the maintenance of these exiles, beyond an allotment of virgin forest land, which they had no means to clear and cultivate, many of them became a curse to the farming population of Siberia. This system has at last come to an end.

RELIGIOUS LIBERTY.

By the Act of April 2, religious or racial disabilities were abolished. The preamble to that act reads as follows:

"All existing legal restrictions of the rights of Russian citizens by reason of their affiliation with any denomination, creed or nationality, are hereby repealed."

This preamble is followed by an enumeration of all sections of the Compiled Statutes of the Russian Empire which are thereby repealed.

The principle of religious liberty is reaffirmed by the Act of July 27, 1917, whereby the old rule making formal affiliation with some church mandatory was repealed. Civil and political rights are declared independent of church affiliation, which is to be optional with the individual.

Registration of births, marriages and deaths of persons unaffiliated with any religious denomination is to be the duty of civil authorities.

STATUS OF THE ROMAN CATHOLIC CHURCH.

Throughout the rule of the Romanoff dynasty, the Roman Catholic Church was subject to many legal restrictions. The participation of the Roman Catholic clergy in the Polish insurrection of 1863 resulted in many oppressive measures against the Roman Catholic Church. All these restrictions have been formally repealed by the Act of the Provisional Government of August 8, 1917. The Roman Catholic Church has been given complete autonomy, the Government retaining only a very limited supervisory power; namely:

"The Roman Catholic Archbishop-Metropolitan, the bishops of the dioceses, the vicarious bishops with the right of succession (*cum jure successionis*), and apostolic administrators are appointed by the Holy See, with the consent of the Russian Government." (Section 3, Subdivision 1.)

The president of the Roman Catholic Theological Academy is appointed by the Archbishop-Metropolitan, with the approval of the government. The appointment of other members of the faculty must be merely reported to the government.

The bishop is required to furnish to the local authorities a list of members and secretaries of his consistory, as well as the name of every person appointed by him to the faculty of the theological seminary.

Students of theological seminaries are required to pass a state examination in Russian literature, Russian history and Russian geography.

A noteworthy provision of this act is that which grants complete liberty to the Order of Jesuits within the republic.

FREEDOM OF ASSEMBLAGE AND ASSOCIATION.

By the Act of April 25, 1917, freedom of assemblage and association was proclaimed.

Section 1 of the act grants to all "Russian citizens" the right to arrange meetings in halls or in the open air without any special permit. Section 2 makes an exception of railway track-

age. This restriction is meant to prevent obstruction of railway traffic in case of strikes of railway employees. The section is reproduced from the bill framed by the Constitutional Democratic Party for the short-lived first Duma in 1906. Meetings in public thoroughfares are allowed, but they must not interfere with traffic.

Section 4 grants to all "Russian citizens" the right to organize societies and associations for any purpose not repugnant to the criminal law. Section 5 authorizes such societies to unite with other societies as well as to enter into relations with societies and associations organized in foreign countries. In order to be recognized as a legal person any such society must duly incorporate. No such society or association may be dissolved by the government, except by judgment of the court, after a trial for some specific act prohibited by the criminal law.

CO-OPERATIVE ASSOCIATIONS.

The growth of co-operative associations in Russia since the first revolution has been phenomenal. According to latest statistics, there were at the time of the revolution about 30,000 co-operative associations with an aggregate membership of 12,000,000, representing a population of about 60,000,000 persons. The turnover of the Central Bank of these associations in Moscow amounted for the first half of the calendar year 1917 to 1,500,000,000 rubles. Yet the government of the Czar looked with suspicion upon these organizations, and their legal status was very uncertain. They had no right to form central organizations and were otherwise handicapped in their activities. The Provisional Government, by the Act of July 3, 1917, gave the co-operative associations a legal status. They may incorporate by registering with the circuit court of the respective province. A legal status was also provided by a subsequent act for national conventions of the co-operative societies.

CO-EDUCATION.

One of the earliest acts of the Provisional Government was the order of the Minister of Public Instruction, Professor Manuilov, in April, 1917, establishing the principle of co-education in high schools. By the same order, women are given the privilege to be appointed teachers in high schools. Formerly they could teach only in high schools for girls.

ELECTION LAWS.

The provisions of the Russian election laws are made uniform for all elective bodies. Every citizen, male or female, of the age of 20 years or over, is qualified to vote in all elections within the district wherein he or she resides or is engaged in business or employment.

No residential qualification is required from candidates for elective offices. Any citizen, male or female, may be nominated for office in any district even though he or she is not a qualified voter therein.

All nominations are made by petition. The number of signatures required is very small. In the elections to the Constitutional Convention, 100 signatures were sufficient; in the elections to the zemstvos (district councils) ten signatures are sufficient.

As a rule, all elections are by direct ballot. There are, however, some exceptions.

Elections to the Provincial Zemstvo Council are among these exceptions. Members of the Provincial Council are elected by the district council.

Another exception was made in regard to the City Council of Petrograd. The city of Petrograd is divided into boroughs, each of which has its own borough council elected by direct ballot. The city council for the whole city of Petrograd is elected by the borough councils.

Furthermore, all executive officers are elected by the deliberative bodies. Thus the city mayor, the city clerk and the city executive board are elected by the city council. Similarly, the executive boards of the zemstvos are elected by the councils, likewise the executive boards in towns (rural settlements). The persons thus elected need not be members of the deliberative body by which they are elected.

PROPORTIONAL REPRESENTATION.

The principle of proportional representation has been adopted for all elections to deliberative bodies.

Every ticket may contain as many names as there are candidates to be elected. The total number of seats is apportioned among the several tickets pro rata to the number of votes cast for each ticket. The total number of votes cast for each ticket is multiplied

by the number of offices to be filled and divided by the total number of votes cast within the province, district, city or town; the quotient thus obtained determines the quotum of votes required to elect one candidate. Each ticket is then allotted as many offices as it is entitled to in accordance with the number of full quota cast for it. The unapportioned offices are then allotted to the tickets with the highest excess votes over their full quota. The candidates on each ticket are declared elected in the order in which their names are placed thereon on the nominating petition and appear on the ballot.

The election laws provide only for a straight party ballot. Any voter may choose only one of the many party tickets; no provision is made for a split vote. The reasons for this rule will be stated in a further paragraph. (See *Constitutional Convention.*)

LOCAL SELF-GOVERNMENT.

Home Rule.

The acts of the Provisional Government in relation to local government in the cities and in rural communities place no restrictions whatsoever upon its authority. Complete home rule is assured to them.

The district zemstvo (corresponding to our county government) is empowered to own and operate rural post-offices and telephones; to establish a system of mutual fire insurance; to organize credit unions, savings banks, co-operative societies and consumers' leagues; to own and operate grain elevators, cold-storage houses, provision stores, bakeries, etc.; to buy and sell agricultural machinery, seed, fertilizers, etc.; to organize, own and operate public workshops, labor exchanges and employment bureaus; to publish and sell books, etc. (Act of June 22, 1917, Section 2.)

The city government is authorized to own and operate all public utilities; to build and maintain municipal tenement houses, public dining-rooms, and tea houses; to sell bread, meat, milk, fuel, etc.; to maintain markets, warehouses, cold storage houses, banks, etc.; to establish public workshops and public works, and institutions for the regulation of labor and prevention of unemployment, such as labor exchanges, employment bureaus, etc. (Act of June 22, Section 2.)

The same principle applies to the government of townships or village communities and *volosts* (intermediate divisions between a township and a district, or county).

A very important provision of the new laws is that which vests the local government with full authority over the school system. Under the monarchical régime the local government could only raise the funds for the support of schools, when specially authorized by the central government of the empire, but it had no voice in school matters.

Police.

The Czar's police had become so hateful to the Russian people that the name of the institution has been changed to "militia." The fundamental change in the organization of the police consists in the substitution of a municipal or county force for the imperial constabulary of the monarchical régime. The chief of the militia and his assistants are appointed by the municipal or county executive committee. The members of the force are appointed by the chief of the militia.

Administrative Centralization.

Although the Provisional Government has adopted the principle of home rule in regard to local self-government, yet the old principle of centralization has not been entirely discarded. The governors of the provinces and the district commissioners are still appointed by the central government and are vested with supervisory powers over the local government.

REFORM OF THE COURTS.

Immediately after the organization of the Provisional Government a commission was created to revise the codes of procedure. The labors of the commission were not completed when the first Provisional Government was overthrown. Several reforms were enacted, however, as the commission proceeded with its work.

Justices of the Peace.

In 1864 a new system of courts was established by the reform of Emperor Alexander II. By that act the old courts, which had become notorious for their abuses and corruption, were abolished and a more liberal system of jurisprudence was established.

Inferior local courts were patterned after the English and French justices of peace. Later, however, political reaction resulted in curtailing the powers and jurisdiction of these elected judges, who were largely superseded by judicial officers appointed by the Department of Justice. The Provisional Government has not only re-established the system of local elective justices of the peace, but has democratized the institution in accordance with the principles of the revolution.

A court of three justices, with one presiding officer, has been substituted in the place of a single justice of the peace. Both men and women are eligible to hold office as justices of the peace. The justices are elected in cities by the city council and in rural districts by the council of the *volost* (a district comprising several townships).

Immediately upon the election of the new justices of the peace the tenure of office of their predecessors terminates.

"*Administrative Justice.*"

Under the American system, acts of executive officials are subject to review by the courts. Under the old Russian system, acts of executive officers could be reviewed only by the higher administrative bodies. The First Department of the Senate was a quasi-judicial body vested with special jurisdiction on appeals from provincial administrative boards in complaints against officials. For the past half-century, legal writers in Russia have favored the continental system of "administrative justice," which provides special courts for the trial of actions against government officials. This system was adopted by the Provisional Government in the Act Relating to Courts in Administrative Actions of June 12, 1917.

Qualifications of Jurors.

The sections of the Code of Criminal Procedure relating to juries were amended by abolishing all property qualifications for jurors. Any male citizen who can read and write Russian, is of the age of 25 years or over and has resided no less than two years within the city or district may serve as a juror.

Jury in Courts-Martial.

By the Acts of May 19 and July 17, 1917, a jury was provided for trials before courts-martial in the army and navy.

The jury consists of an equal number of commissioned officers and soldiers.

The Parole System.

By Act of August 14, 1917, the parole system was introduced for prisoners who have served a part of their sentences.

Admission of Women to the Bar.

Under the Code of 1864 only male citizens were qualified to practice law. By the act of June 14, 1917, women may be admitted to the Bar.

THE CONSTITUTIONAL CONVENTION.

Immediately after the forced abdication of Emperor Nicholas II, the Provisional Government announced that a Constitutional Convention would be called as soon as practicable, to determine the future organization of the Russian state. The first title of the election law for the Constitutional Convention was promulgated by the Provisional Government on August 2, 1917.

The underlying principles of the election law are the same as those adopted for all elections in Russia.

The only persons, besides convicted criminals, who are disqualified from voting in the elections to the Constitutional Convention are members of the former reigning house of Romanov. The majority of the commission, by which the law was framed, led by the venerable dean of the Russian bar, Mr. Arseniev, was opposed to this disqualification, believing that the influence of the members of the Romanov family was too insignificant to justify such a departure from the principles of democracy. The minority, however, regarded it imperative in order to secure the republic against the possibility of restoration of the monarchy. The Provisional Government accepted the view of the minority.

Provision is made for the registration of voters.

All nominations are made by petition of no less than 100 voters. No residential qualification is required for candidates. Any person may be nominated in more than one, but not more than five, districts.

The principle of proportional representation has been adopted for the whole country, except in remote districts with a sparse population where only one representative of the district is to be elected.

The total number of members of the Constitutional Convention was fixed at 730, the total number of election districts at 73, the number of representatives from one district varying from 1 to 36.

Under the plan of proportional representation adopted in Russian elections provision is made only for a straight party vote. No candidate may be nominated on more than one ticket within the same district, but two or more committees which have filed nominating petitions may consolidate their tickets into one.

The commission which had charge of the framing of the election law for the Constitutional Convention had before it two schemes: election by majority representation and proportional representation. After a thorough discussion of the subject, the commission by a vote of 27 to 9, adopted the system of proportional representation, following the Belgian system of d'Ondt. The most important question involved in the plan of proportional representation related to the right of the voter to split the ticket. The commission realized the disadvantages resulting from making the straight party vote mandatory. Yet, in the opinion of the commission, "owing to the lack of education, and even simple literacy among the population, the adoption of the system of 'split tickets' in Russia would result in a large number of spoiled ballots and consequently in the disfranchisement of a large number of voters." The commission further cited the experience of other countries, which shows that even where the voter is permitted to split the ticket only a small percentage of the voters actually avail themselves of that privilege. For this reason the commission recommended the adoption of the section which limits the choice of the voter to one straight party ticket only.

LABOR LEGISLATION.

Special attention was paid by the Provisional Governments to legislation affecting the relations between capital and labor. One of the earliest acts dates back to May 6, 1917, when Prince Lvov was still at the head of the government. It provides for labor committees in private as well as in governmental industrial establishments of any kind.

Labor committees may be organized for the whole industrial establishment as well as for special departments or crafts, upon the request of at least one-tenth of the force.

The committee is elected by direct and secret ballot, every employee, including women and minors, being entitled to vote (Section 3). A majority of the employees of the establishment, department, or craft, as the case may be, must participate in the election in order that the same be valid.

The principle of recall is adopted.

"Members of the committee may be discharged by the administration of the establishment only after a decision by the board of conciliation. A member of the committee may be removed pending a hearing only with the consent of the whole committee. In the absence of a permanent board of conciliation, the matter must be decided by arbitration" (Section 6).

Provision is made for excusing members of the committee from work when attending to their duties on the committee.

"The administration of the industrial establishment is obliged to furnish a meeting place for the meetings of workers called by the labor committee" (Section 12).

But such meetings must take place outside of working hours.

By the Act of August 18, Chambers of Conciliation have been created. The sessions of the chambers in all matters must be public except by unanimous consent of all parties present.

By the Act of September 1, labor exchanges must be organized by municipal governments in settlements with a population of not less than 50,000. In smaller settlements it is optional with the local government. The duties of the labor exchanges include registration of the labor demand and supply, the furnishing of employment, the collection of statistics of labor demand and supply, and all measures intended towards the regulation of demand and supply in the labor market.

DRAFTING OF WOMEN PHYSICIANS INTO THE SERVICE OF THE ARMY.

Women having been granted full equality with men, it is quite logical on the part of the state to demand of women the performance of public duties on a parity with men. Accordingly, all women physicians under the age of 45 were, by the Act of May 13, 1917, drafted into the medical service of the army. Exemptions are provided for pregnant women and mothers of children under the age of three. Mothers of children between the ages of three and 16 may be assigned to hospital duty only at the places of their residence.

The Acts of the Bolshevik Government.

No official publications of the Bolshevik Government have reached this country up to the present writing. Press dispatches have reported two acts likely to be of permanent legal effect; namely, the separation of the church from the state, and the establishment of civil marriage and civil divorce.

Previous to this act, marriage and divorce were governed in Russia exclusively by the ecclesiastical law of the denomination to which the parties belonged. The only exception recognized by the law related to the so-called "Schismatics"; that is, the various sects of dissenters from the established Greek Catholic Church. As the church denied to those sects recognition as religious bodies, their marriages were for a long time treated by the law as mere concubinage. This condition continued for two centuries. Ultimately, under Alexander II, the government found it necessary to grant legal recognition to those marriages. The dissenters were, accordingly, permitted to register their marriages with the police.

By the act of the Bolshevik Government, civil marriage has now become the general law of the Russian republic.

Nationalization of Banks.

According to a special correspondent to the *New York Evening Post,* banking has been proclaimed a state monopoly by the Bolshevik Government.

The decree which outlined that plan, runs as follows:

1. All banking operations are made state monopoly.

2. All private banks and similar institutions will become branch offices of the Currency Bank.

3. The assets and liabilities of the liquidated bank will be transferred into the accounts of the Currency Bank.

4. A special decree will arrange the particulars of the merger between the private banks and the Currency Bank.

5. The banks will preliminarily be managed by the directors of the Currency Bank.

I. A. H.

SCANDINAVIA.

LEGISLATION, 1916.

DENMARK.

Law No. 205, July 6, 1916, about accident insurance, is a new Workingmen's Compensation Act. It covers practically all kinds of employment, raises the amounts of compensation, and makes sure that it will be paid. All prior and special laws concerning the subject have been revoked. The law is divided into 11 chapters. The first chapter (secs. 1-7) contains the general rules, among which may be noted that any accident happening in connection with the employment is covered by the law; for instance, cases where an employee is injured or killed in trying to save another employee from death or injury from an accident happening during his employment. Gross negligence on the part of the injured may cause reduction or denial of compensation; intoxication is always considered gross negligence. The government may arrange with a foreign government about which country's compensation laws shall govern where a business is carried on in both countries, and where a man is temporarily engaged in his employment within the boundaries of another country. Chapter 2 (secs. 8-16) contains rules for the organization, etc., of the compensation board. By section 13 the board is given the right to raise or reduce the compensation granted from the amount originally fixed, when it is shown that the information upon which the original grant was based was seriously erroneous. Chapter 3 (secs. 17-21) contains the specific rules about how the duty to insure shall be complied with. It contains a rule under which a certain subsidiary solidaric obligation is imposed on all recognized accident insurance companies and upon such employers who have been allowed to insure themselves, to pay, *pro rata,* such compensation to which an injured employee is entitled, but which he has been unable to recover from his employer (or his estate) because he, illegally, had neglected to insure according to law. The board advances the compensation until it shall have been collected from the subsidiary insurers. Chapter 4 (secs. 22-43) fixes the divers amounts of compensation. Chapter 5 (secs. 44-48) gives rules for how notices of accidents shall be given and served. Chapters 6, 7, 8, and 9, enumerate

the employers bound to insure their employees, as well as rules for voluntary insurance by employers not covered by the law; these are very few. Chapter 6 (secs. 49-53) deals with manufacturing, the trades, merchants and domestic service; Chapter 7 (secs. 54-65) with marine employment, except fisheries and petty shipping which are covered by Chapter 8 (secs. 66 and 67); Chapter 9 (secs. 68-73) covers agriculture, trucking and forestry. Chapter 10 (sec. 74) fixes the amounts to be contributed to the insurance fund by the public treasury, and Chapter 11 (secs. 75-80) contains the penal rules.

Law No. 90, April 11, 1916, is a new Judicial and Practice Code. Ever since 1849 numerous attempts have been made to reform the Danish civil and criminal procedure. Commission after commission had been appointed, a number of reports had been made by them, bills prepared and introduced into the Rigsdag, but for one reason and another, none of them had been enacted into law. The new code introduces the jury system for felony cases, does away with all inquisitory methods in criminal proceedings, and establishes the principles of verbal pleading and of publicity in all cases, both civil and criminal. There are no juries in civil or in misdemeanor cases. Private prosecutions are reduced to a minimum, and where they are retained, they are tried in the form of the civil procedure. It is not possible, in a review of this kind, to go into details of the law. As to some features thereof, the writer refers the readers to his article in the University of Pennsylvania Law Review, Vol. 65, p. 543 ff.

Law No. 152, May 17, 1916, about punishment of cruelty to animals goes very far in protecting animals of all kinds, including fishes, from all sorts of cruelty and unnecessary pain. Special permits are required for vivisection, and rules are given for the control thereof.

Law No. 167, same date, reorganizes the administration of the mails in the direction of greater decentralization.

Law No. 40, February 25, 1916, regulates the practice of dentistry.

Law No. 48, February 28, 1916, deals with navigation schools.

Law No. 50, same date, is a new shipping and navigation law; we do not have the details of the act before us.

Law 131, April 17, 1916, is a law about pilots and pilotage.

Law No. 231, July 28, 1917, provides organization of the technical instruction given craftsmen.

Law No. 159, March 31, 1916, improves the position of women teachers by opening certain higher offices to them.

Law No. 89, April 5, 1916, imposes penalties for persons unlawfully disposing of imported goods (war measure). This law was superseded by Law No. 384, December 15, 1916, whereby the very severe penalties were somewhat reduced.

NORWAY.

In 1916, four amendments to the constitution were passed, the only one of general interest being the one of April 8, 1916, whereby art. 12 of the constitution was so amended as to make it possible for women to become members of the king's council.

The flooding of neutral countries with gold is the cause of law of April 15, 1916, whereby there is given the Bank of Norway a temporary permission to refuse to pay currency for gold in bars. War conditions are also behind the law of July 21, 1916, increasing the obligatory gold reserve and the permissible amount of notes of the same bank.

The many sinkings of ships through mines and torpedoes have occasioned the law of July 21, 1916, materially increasing the compensations for marine accidents heretofore paid under the law of August 18, 1916, and its supplements.

Law of June 9, 1916, is an obligatory arbitration act. It was passed against strong protests by the labor interests, the moving reason being that various labor disputes had arisen which threatened the whole economic life of the country. The new law gives to the king the power to refer to obligatory arbitration any dispute between a labor union and an employer or employers' association, when in his judgment the dispute exposes material national interests to danger; and having so referred the dispute, the king is given the further power to prohibit the commencing or continuing of any strike or lockout in connection therewith. The arbitration court consists of five members, the president and two other members to be appointed by the king, the fourth member by the General Labor Union, and the fifth by the Norwegian Employers' Association. There is no appeal from the award which may not be made to run for more than three years, unless both parties agree to a longer time.

The great fire in Bergen in January, 1916, led to the adoption of the law of April 4, 1916, whereby there is given the city extensive powers of eminent domain, in order that the new city may be properly planned and built.

The balance of the Norwegian laws of 1916—and their name is legion—are either of strictly local interest or have to do with special conditions arisen during the war, and in their nature are intended to be temporary.

SWEDEN.

Almost the whole of the Swedish legislation for 1916 is war legislation, in one sense or another. The objects sought to be attained are, partly to put limits to the interference by belligerents with Sweden's free intercourse with other countries, partly to strengthen the inner organization by mobilizing resources of food, raw materials, etc. Some of the laws are enacted as permanent, others must be submitted to the next ordinary Riksdag for revision. Most of the laws contain, in addition, a clause giving to the king the power to amend and extend these laws in cases of actual war, imminent danger of war or other extraordinary conditions occasioned by the war.

Some of the laws so enacted are worth noting, as they give a good insight into the intrigues of both belligerents in neutral countries.

The law of April 17, 1916, provides that contracts, whereby a party undertakes not to import, export or transport certain goods to, from or inside Sweden are void unless they receive royal approval. And, consent having been obtained breach of the contract is treated as a criminal offense and punished with a fine up to Kr.10,000 or prison not exceeding one year. With the same penalty is punished he who gives information to the representatives of a foreign power or for the benefit of a foreign power concerning imports to Sweden. This enactment is intended to meet the extensive commerce-espionage of which both sides to the war have been guilty.

The law of March 6, 1916, deals with transfers and chartering of Swedish vessels. In case of war, imminent danger of war, etc., the king may ordain that for a certain time, or until further

notice, no Swedish vessel or ship's part may be transferred to a foreigner, unless royal consent shall have been previously granted, this not to affect transfer of a part already owned by a foreigner to another. Also, that without previous consent no Swedish vessel may be chartered to a foreigner except for a fixed time, not to exceed six months. Penalty, fine not to exceed Kr.20,000 or imprisonment not to exceed one year; in addition, the vessel shall be confiscated or, if not within the jurisdiction of the Swedish authorities, the owner must pay its value into the public treasury. In case of war, danger of war, etc., the king may also prohibit Swedish vessels, other than sailing vessels, of more than 200 registered tons from acting as freighters between foreign ports; from this there is, however, a number of exceptions mostly looking to the keeping intact of established routes. Breaches are punished as above.

Law of May 30, 1916, has further restricted the power of foreigners to own and hold real estate, mining property and shares in certain corporations in Sweden.

Law of February 8, 1916, has temporarily suspended the right to free coinage of gold.

It will be noticed that these Swedish war measures are like those of the United States in this, that they grant to the head of the Executive power a vast amount of discretion.

Among the other laws passed may be mentioned law of June 30, 1916, about automobile accidents and liability in damages for the same; law of June 2, 1916, about vaccination of children, and finally law of June 17, 1916, being a Workmen's Accident Insurance Law. The law covers practically all persons employed for wages or salary, whose annual compensation does not exceed Kr. 5000, but the maximum basis upon which the compensations are calculated is at the rate of an annual compensation of Kr.1800. The state pays the cost of administration, the employer pays the compensation; a state insurance corporation is established, but the employers have the privilege to form mutual insurance associations, upon certain conditions and under proper supervision. Otherwise, the provisions of the act are very much like those contained in other compensation acts now almost universal.

JURISPRUDENCE.

DECISIONS BY THE SUPREME COURT OF SWEDEN.[1]

Private International Law.—A Swede emigrated to the United States in 1901; his wife and children were left behind in Sweden. The wife died in 1908 intestate. The husband claimed the whole estate stating that he had become a citizen of the United States and resided in the State of Montana, and that under the laws of this state the children had no claim. The claimant furnished no proof of his American citizenship, nor of the contents of the intestate laws of Montana, but the court stated that this was irrelevant, as the estate must be distributed according to the laws of Sweden, as both the estate and in the intestate had always been in Sweden (1915, 391).

A woman of Hamburg sued a man in Sweden for support of her illegitimate child, which had been conceived during a visit of the man to Hamburg. The question arose whether Swedish or German law should rule the case, and the court decided in favor of *lex loci acti.* The man's defense was *exceptio plurium,* and as he proved the averment, he was, according to German law, acquitted (1915, 1).

A Russian died in Sweden leaving an estate. Application was made for the appointment of a guardian for his 17-year-old daughter living in Russia. The court refused the petition on the ground that according to Russian law the daughter was not subject to guardianship (1915, 321).

Family Law.—A father gave to his daughter by written deed certain personal property, stating that they should be and remain her separate property. After her marriage, creditors of her husband levied on the goods, claiming that as no marriage settlement had been entered into before her marriage, the goods had

[1] Sweden's Supreme Court or Konungens Högsta Domstolen (the King's Highest Seat of Judgment) sits at Stockholm. It has 21 justices and sits in four departments of five justices each. Prior to 1915 it sat in three departments of seven justices each, see the JOURNAL for 1917, p. 254. The decisions hereinafter reported were almost all rendered prior to the going into effect of the reform. Cases may be referred to the full bench of 21, but in such cases it is very difficult to reach a unanimous decision. The cases herein mentioned have been taken from Dr. Hekscher's report in Tidsskrift for Retsvidenskab, 1917, p. 121, etc.

become community property and as such liable for the husband's debts. The court decided in favor of the wife on the strength of sec. 2, chap. 10, of the Marriage Law (1912, 28).

A husband and wife, while they were still married, entered into an agreement about the amount the husband should contribute towards the support of the children in case of divorce. Shortly after, a decree of divorce was entered, and the husband continued for several years to pay the contributions agreed upon. Then the wife married again, whereupon the husband promptly stopped his payments, claiming that the agreement was void as entered into while the parties were married to each other. The court found for the wife upon the ground that even if the agreement was void when entered into, the husband had ratified it by constantly complying with its terms after the divorce. It seems to appear that the amount agreed upon was larger than what the father could be legally compelled to pay (1915, 332).

A man had three illegitimate children with the same woman. He entered into an agreement with her to the effect that, upon the payment of a round sum, she waived all further rights against him for the support of the children, whom she undertook to provide for herself. Later, the guardian appointed for the children sued the father for their support. The case was referred to the full bench, and was decided by a majority of 14 against 7 in favor of the guardian, on the ground that the mother's release could have no effect in cancelling the father's legal duty to support his children. The dissenting 7 held that it must first have been proved that the mother was unable to support the children (1913, 87).

In Sweden adoption is unknown as a legal institution. In 1913, a draft of a uniform Scandinavian law on adoption was prepared, but so far it has not been enacted into law.

A husband and wife emigrated to the United States. They left their baby son behind in the care of a relative. Some years later, the parents demanded that the child should be returned to them, and when the foster father refused, they appear to have obtained a requisition through the American authorities on the Foreign Office at Stockholm for the delivery of the child into their hands. The court decided that under the Law of Sweden such requisition could not be complied with, coming as it did

from persons residing abroad, against the protest of the person in whose care the parents had left the child before they expatriated themselves (1912, 3).

A father and mother gave their three-year-old child to a relative of the father upon the understanding that the child should be and remain a member of the family of the foster father. Three years later, the parents demanded the return of the child. The foster father contended that, although adoption proper was not recognized as a legal institution in Sweden, still an agreement as that entered into was not against public policy, and should be sustained; in case this was not agreed to, he demanded the refund of the expenses he had been put to on account of the child. The court stated that the agreement was not binding in law, and as to the expenses had they could not be recovered, as no stipulation to that effect was contained in the agreement (1913, 603).

Law of Inheritance.—A man and wife had several children, some of whom emigrated to the United States. The mother died later, and the children in America demanded that the estate be settled. The heirs in Sweden protested against any interference by the Americans, as these were foreigners and as such were bound to appear within "night and year" after the death and prove their claim, which they had neglected to do. The court decided that *prima facie* the claimants were heirs and as such had the right to demand the settlement of the estate, and that under the proceedings to be taken in this respect, it would be decided whether their right of inheritance actually had been preserved (1915, 446).

Law of Things.—A contractor agreed to erect an elevator in a private dwelling, payment to be made in installments. Before the last payment became due, the house had been sold and resold. By the contract, the contractor had reserved the ownership in the elevator until fully paid for. Default having been made in the payment of the last installment, the contractor removed certain parts of the elevator, whereby it became useless. The court sentenced the contractor for malicious mischief and trespassing, stating that every part of the elevator as it was put in place became part of the appurtenances of the realty (1913, 627).

The question as to the passing of ownership to personal property came up in the following case. The owner of a landed

estate sold all of the grain then growing on her land for a fixed sum. The grain was harvested and stacked on the premises. A judgment creditor of the land owner levied on the greater part thereof. The court upheld the levy on the ground that the grain had remained in the possession of the seller (1912, 528).

A man purchased a large quantity of lumber from a sawmill. He paid for it and sent a steamer to the wharf of the sawmill to take it off. It was found that the steamer was not large enough to load the whole amount. What was left over was brought back to the sawmill's yard and stacked there in separate stacks. Then the sawmill failed, and the purchaser claimed the remaining part of the lumber as his property, but the court decided in favor of the bankrupt estate, on the ground that what had taken place was not sufficient to convert the lumber from things generic to a thing specific (1914, 209).

Under the law of Sweden, the lien of a mortgage expires at the end of 10 years after the record thereof, unless the recording (*intäckning*) is renewed within the 10 years. A mortgage creditor of a bankrupt debtor filed his claim under the mortgage obligation against the bankrupt estate, and it was approved. Later the estate sold the mortgaged property and paid off the mortgage debt with interest. Then it was discovered that during the time between the approval of the claim and the sale of the property, the 10 years had expired. The court gave judgment against creditor for the amount paid him in satisfaction of the mortgage, and referred him to his claim for dividend as an ordinary creditor (1914, 162).

Mercantile Law.—What constitutes "doing business." A man residing at Malmö was employed by a French firm as their inspector of cargoes of grain and fodder sold to and arriving at Swedish ports; he had nothing to do with the taking of orders and received a fixed salary. Action was brought against him for doing business without license, but the court acquitted him (1913, 80).

Liability of Agent: A broker in Copenhagen asked a broker in Gottenborg to sell certain goods, stating that he represented a Copenhagen firm of wholesalers. The Gottenborg broker sold the goods to a local firm, stating that he acted as agent and naming the principal. The owners of the goods refused to deliver deny-

ing the broker's authority. The purchaser brought suit against the broker for the difference in price, and their claim was upheld by the court, the agent having failed to prove his authority (1912, 412).

Positive or Negative Interest: A Swedish distiller had contracted to deliver to a merchant of Warsaw a certain quantity of denatured alcohol, but delivered two-thirds of the quantity only. The purchaser sued for the profit he could have made on the undelivered part, but the court allowed him only the difference between the contract price and the price for which he could have purchased the undelivered portion elsewhere (1915, 117).

A lady had ordered an elaborate costume from a tailor, but refused to accept it or pay for it on the ground that she had stipulated expressly that it must be delivered on a certain day. Against the tailor's denial, she failed to prove her assertion, and judgment was given for plaintiff (1914, 173).

The Proper Time for Reclamation: A manufacturer sold a large post of wagon wheels to a wagon builder, to be delivered in three specified installments. The seller delivered one of the installments in two parts, the first of which did not satisfy the purchaser, while the second was found acceptable. The purchaser did not protest against the first part until after the delivery of the second part, claiming that he was not bound to reclaim until all of the particular installment had been delivered. The court, however, gave judgment for the plaintiff (1912, 198).

A co-operative society of farmers had purchased 700 sacks of artificial fertilizer, which arrived per steamer at Oskarhamn. It appeared from the books of the custom house that the whole 700 sacks had been unloaded, but upon delivery of the goods to the society at an inland railroad station, 40 sacks were missing. A broker had attended to the clearing of the goods, and the society brought suit against him for the price of the 40 sacks. He claimed that at the request of the society the goods had been stored on the wharf until cars could be obtained, and that he had never been in possession of the goods, but as it was shown that he had been in possession of the bill of lading and had surrendered it without reservation, and that he had left the goods lying on the wharf without having them watched, the court found against him (1913, 232).

FINLAND.

Ordinance of March 16, 1916, regulates the export of goods to England which has increased enormously during the war.

Ordinance of June 22, 1916, gives to women equal rights with men to positions as professor, lector, etc., at the university, technical high school and other educational institutions, but she cannot become a member of *cosistorium ordinarium* of the university. Ordinance of April 8, 1916, gives to married women equal right with spinsters and widows to become postmistresses, provided their husbands go on their bonds.

Ordinance of June 22, 1916, has extended the scope of post-offices by making them collection agencies for commercial and other claims, reading in Finnish or Russian money of not more than 1200 marks (400 rubles) provided the claim is evidenced by some writing in the Finnish, Swedish or Russian languages. It likewise authorizes the post-offices to receive notes for acceptance or payment, and to protest them if not accepted or paid.

For many years the Finnish legislature has endeavored to reform the land laws, in so far as to substitute individual ownership in severalty in the place of village community property. This reform has now been carried out by the ordinance of October 26, 1916. It is not possible here to go into the details of this law, as a full treatise on the land laws of Finland would be required in order to make the matter understood.

No statement of Icelandic legislation for 1916 has come to hand.

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(The author, Dr. Juris George Frederick Granfeldt, Associate Justice of Abo Hofrätt, died August 5, 1917, 52 years old. He was one of the most prominent practical lawyers of Finland and was an authority in all matters of commercial law. As representative of Finland he attended the international congresses of 1910 and 1912 at The Hague about uniform laws for commercial paper. He published works upon both legal and historical questions, and even a volume of poems.)

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The new judicial codes and codes of procedure of Norway and Denmark and the various drafts for such for Sweden have called

forth a large number of books, pamphlets and articles in all three of the countries. On the list of publications before us we count at least 50 such:

Goos, C.: The Danish Law of Crimes. Special part. I and II. Köbenhavn, Gad.

Hagerup, Francis. The Criminal Code. 2d edition. Kristiania, Aschehoug.

Jörgensen, Alfred Th.: The position of children at the time of the Reformation; during the 18th century; from 1800 to 1870. Börnesagens Tidende XI, 12, 67, 113, 173, 177.

Control of childbirth appears, judging from the number of pamphlets and articles published, to have been as much discussed in Scandinavia during 1916 as it was with us a short time ago.

Sweden is engaged in preparing a new criminal code. The various bills proposed have called forth a whole literature of books and pamphlets touching on most of the questions raised and involved.

Other questions much discussed in all three of the countries, as well as in Finland, are woman suffrage and proportional voting.

Morgenstjerne, Bredo: Engelsk Parlamentarisme, dens vekst og hovedlinjer (English parliamentarism, its growth and main features). Kristiania, Aschehoug.

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Steincke, K. K.: Handbook of the laws of general support, poor houses, sick benefits, as well as the laws of funds for assistance, old age pensions, contributions to illegitimate children and widows' children, boards of guardians, etc. Published with assistance of the Ministry of the Interior. Köbenhavn, Gad.

The publications about what we call social welfare have, as in former years, been so numerous that their name is legion.

Year Book of the University of Copenhagen. Not for sale. Apply to Professor H. Munch-Petersen, Copenhagen, Denmark.

The questions arising from the relations of Church to State have been much discussed, and proposals for new Church constitutions and canons have not been few.

International Law, both private and public, has also called forth a whole literature. A great deal of this will be of temporary interest only, and it would be extremely difficult to point out that which has permanent value until it is known what kind of a peace will result from the present war.

Dr. Frantz Dahl: Before closing this list, we desire to pay our compliments to Dr. Dahl. Without his complete and careful lists of legislation, his bibliographies, his biographies, reviews and necrologies, it would be practically impossible to keep the readers of the JOURNAL even tolerably *á jour* with the legal life of Scandinavia. Dr. Dahl is chief of department in one of the ministries of the Danish Government and also Secretary of the Council of State. These two positions would furnish enough work to keep an ordinarily strong man busy. Not so with Dr. Dahl; for, although he is not blessed with a strong constitution, he finds both time and strength to do an enormous amount of additional work, and to do it most excellently. In Scandinavia he is the main depositary of knowledge of foreign legislation and literature, keeps up correspondence with many lawyers in other countries; he is constantly called upon by foreign governments, universities and legal journals for information about legal affairs, not only in Denmark, but in Norway and Sweden as well.

A. T.

SPAIN.

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The great war has had a depressing effect upon the publication of Spanish legal works, as it has had upon all other literature, except that of a military character. Few books of importance bearing upon the law were issued by the Spanish press during 1917.

Eloritta T: *"Tratado elemental de Derecho Politico comparado."*

A general review of the conditions of the modern state, and the various changes which it has undergone of recent years. The question of constitutional right is treated at considerable length, and with much ability. (4to. Madrid. Price, 7 pesetas.)

Franquesa J: *"Contrabando y defraudación."*

An excellent little treatise on the penal law relating to the avoidance of customs and duties in a land "where everybody smuggles," and where, despite the severe punishment inflicted, the offense is regarded by the great majority of the people as a venial one. It contains the latest rulings of the Supreme Court on the subject, and will be almost indispensable to the Spanish criminal lawyer. (8vo. Madrid. Price, 4 pesetas.)

Sicars N: *"La delincuencia en los niños, sus causas y sus remedios."*

This is a short and very interesting essay on the delinquencies of children, which deplorable phase of modern society is eliciting so much notice from the legislators and jurists of the present day. The author discusses the causes of the criminal tendencies of minors and suggests various remedies, none of which, however, is new. (Barcelona, Price, 1 peseta.)

Secundino Coderch Manau y S. Coderch y Mir: *"Tratado de la menor edad."*

This work, on the rights and duties of minors, is one of great value, and treats of the legal position of the minor under all conditions; while he is subject to paternal authority, while he is under guardianship, and after he has obtained emancipation and reached his majority. The obligations imposed upon those who have charge of him, and are responsible to the law for his proper treatment and protection, are clearly set forth; and the necessity for convoking the family council—an institution of Roman origin adopted by all Latin nations—is thoroughly explained. (4to. Barcelona. Price not stated.)

Arozena M.: *"Legislación aduanera española."*

A compendium of the various ordinances, regulations, and treaties having reference to the collection of customs in the peninsula. It is very exhaustive and complete, and affords an excellent opportunity to the student as well as the practitioner for familiarizing himself with this important branch of commercial law. (4to. Laguna de Tenerife, 2 vols. Price, 17 pesetas.)

(All of the above-mentioned publications are for sale by Agustin Bosch, Barcelona, Spain.)

S. P. S.

A. Marichalar y C. Manrique: Recitaciones del Derecho Civil de Espana. Segunda Parte de la obra Historia de la Legislacoin, 2 vols. Madrid, 1915-1916.

A. Maura: Estudios Juridicos. Valencia, 1916.

L. Medina y M. Marañon: Leyes civiles de España conforme a los textos oficiales. Madrid, 1916.

C. Valverde: Tratado de derecho civil español. Tomo V. Derecho de sucesion. Mortis causa. Valladolid, 1916.

J. Villaplana: Legislación eclesiastica, civil, militar, penal y procesal sobre esponsales, matrimonio, legitimaciónes y divorcio. 1916.

A. Aguilera Arjona: Galicia. Derecho consuetudinario. Madrid, 1916.

F. Maspons: Tractat dels Pactes Nupcials o Capítulos matrimonials que escrigué Joan Pere Fontanella. Vol. 1. Barcelona, 1916.

J. Pella y Fargas: Codigo Civil de Cataluna. Exposición del Derecho catalan, comparado con el Codigo civil español. 2 vols. Barcelona, 1916-1917.

M. Abella: Manual de expedientes posesorios y de dominio. Madrid, 1916.

Anuario de la Direccion de Registro correspondiente a 1916.

F. Barrachina: Derecho hipotecario y notarial. Tomo V. 1917.

J. Morell: Comentarios a la Legislación Hipotecaria. Vols. I and II. Madrid, 1916-1917.

C. de Odriozola: Diccionario de Jurisprudencia hipotecaria de España. 5th ed. Madrid, 1916.

V. Cathrein: Filosofía del Derecho. El Derecho natural y el positivo. Madrid, 1916.

S. Garcia: Concepto actual del Derecho. Madrid, 1916.

F. Giner de los Rios y A. Calderon: Principos de derecho natural. Madrid, 1916.

J. Ma. Campos: Legislación y jurisprudencia canonica, novisima y disciplina particular de España. Tomo segundo. Madrid, 1917.

S. Coderch Manau y S. Coderch Mir: Tratado de la menor edad, 1917.

N. Lopez R. Gomez: Tratado teorico-legal del derecho de sucesión. Tercera edición aumentada on la jurisprudencia y

varios modelos de partición de herencia por V. Castaneda. 2 vols. Madrid, 1916.

P. J. E.

SWITZERLAND.

Legislative and International Aspects in 1917.

While the chief attention of the country has been necessarily concentrated on the all-important economic questions resulting from the pressure of war-like activities on the entire Swiss frontier there has, nevertheless, been no little accomplishment in the way of constructive legislation.

STAMP TAX. CONSTITUTIONAL AMENDMENT.

Arts. 41 and 42 of the federal constitution have been amended to allow the imposition of a federal stamp tax. While this important measure is aimed to assist the government financially during the present condition of emergency, such a measure has been under consideration by Parliament for some years past and prior to the outbreak of the general European conflict. In the closing hours, however, of its session of December, 1916, Parliament took up the matter and the federal council outlined an amendment for submission to popular ratification or rejection together with a statute to be passed by Parliament in case the constitutional amendment were to find approval at the polls. It will be observed that this constitutional measure, in sharp contrast with many others heretofore noted in these columns, owes its inception to a *parliamentary* initiative rather than to an initiative supported by the people at large. Apart, therefore, from the economic interest appertaining naturally to such a measure, we have in the present instance a highly interesting and instructive picture of the working of one aspect of Switzerland's complex political organization.

The constitutional steps taken were as follows:

The federal assembly being favorably inclined toward the council's proposition the two Houses, on March 29, 1917, passed a decree providing for an addition to art. 41 of the national constitution, and the insertion of an additional line in art. 42, these being the articles enumerating specific sources of federal income. On the same day, in an additional decree, Parliament, having already in the first decree recited the documentary objects of the

proposed tax, one-fifth of whose net product was proposed to be assigned to the cantons, fixed Saturday afternoon, May 12, and Sunday, May 13, as the voting dates, provision being made at the same time for taking the military vote and directing the federal chancery office to despatch to each cantonal chancellery a number of the two decrees sufficient to furnish every voting citizen with a copy in his native language (French, German, Italian and Romansch), and four weeks prior to the day appointed for the vote, in accordance with the federal act of July 17, 1874, and the federal elections act of July 19, 1872, as modified somewhat by the acts of December 20, 1888, and March 30, 1900; cantonal governments were directed as usual and in accordance with the federal circular of March 13, 1891, to arrange that each commune transmit through the central cantonal government to the federal chancery at Berne an official statement of the same, the communal and cantonal offices transmitting the general results also by federal telegraph to Berne without delay. Participation of all men serving under the colors was to be regulated in conformity with a decree of the federal council made September 23, 1914, in accordance with the unrestricted powers conferred upon it by Parliament in the opening week of the war. The general provisions of these decrees were furthermore embodied in a circular letter addressed on the same day, March 29, 1917, by the federal council to each one of the 25 cantonal governments.

Accordingly, a vote having taken place on the day appointed and the proposed amendments having been accepted, the federal council addressed a carefully prepared statement on May 16, 1917, to Parliament touching the various economic aspects of a law which should adequately carry out the newly adopted measure; and on June 9, the council laid before Parliament a statement of the voting in detail, showing a vote of 190,288 in favor of the amendment and 167,689 against it; 14½ cantons voting favorably and 7½ adversely. At the same time the council proposed a decree to be made on the part of Parliament reciting the vote and declaring the new measure a part of the fundamental law. Such a decree was passed by Parliament on June 19, 1917; and on October 4, following, adopting the conclusions of the federal council in its statement of May 16, Parliament enacted a carefully prepared statute intended to give the constitutional

amendment practical effect, and declaring at the same time that in pursuance of art. 89 of the federal constitution (the referendum article) and of art. 3 of the act of June 17, 1877, touching federal elections, the new act should be officially published on October 5, 1917.

Bearing in mind the constitutionally provided referendum period of 90 days, it will be seen that opportunity on the part of the voters to demand a referendum on the new statute (though not on the amendment itself, which became effective by the vote had on May 13) expired January 3, 1918; on January 15, therefore, the Federal Council decreed, in pursuance of its authority to fix a date for the taking effect of the act, that this should become operative April 1, 1918. Thus the constitutional machinery for the initiation and carrying to completion through joint and harmonious action of Parliament, the voters, and the states of the confederation resulted in the important measure above described. When considering Swiss legislation, it will be found that a popular initiative is the weapon which has brought about constitutional change where an ethical or political aim was in view; where the need has been of an economic character, Parliament supplies the driving force. Both the fact and the contrast should be of interest to every student of political institutions. Illustrations are to be seen in the recent *in*action of Parliament in the cases of the three popular initiatives seeking (1) the constitutional abolition of gaming houses; (2) the submission of international treaties to the voters; and (3) the introduction of the principle of proportional representation into elections for members of the national council. In these instances, federal inaction has already delayed a presentation of the initiative petitions to the voters beyond the year constitutionally allowed to Parliament for this purpose. New plans of constitutional change are as follows:

From the federal council itself there proceeded a motion in August, 1917, for an increase in its membership from seven to nine, the council being concededly an over-burdened body; also on October 20 the council proposed a constitutional revision which will permit a broadening of navigation acts to meet the present-day needs of transit on Switzerland's many waterways.

Such a constitutional change would of necessity add an entirely

new article to the constitution, rather than a change in existing articles. Also, on July 17, 1917, there reached the federal chancery office an initiative petition supported by some 116,000 signatures and due to the efforts of the democratic-socialist party (to be carefully distinguished from the radical democrats) and seeking the institution of a direct federal tax through further amendment of arts. 41 and 42 of the constitution, these being the articles just amended by the stamp tax clauses. The petition was submitted to Parliament in pursuance of the act of January 27, 1892, regulating constitutional revision.

TREATIES.

May 30, 1917, there were exchanged at Berne the formal ratifications of an important treaty between Austria and Switzerland signed August 21, 1916, and approved by Parliament December 21, 1916, and which declares valid all documents bearing the seals of a court or high administrative body of either contracting party without further attestation, provided such administrative body be one of a list accompanying the treaty. The document itself, it is of interest to note, is executed and engrossed in parallel columns in the French and Latin tongues. Another convention and one of much significance is that concluded with Germany in August and securing permission of the German government for exportation to Switzerland of 200,000 tons of coal each month and 19,000 tons of iron and steel, the Swiss being wholly dependent on Germany for all of these products; at the same time Switzerland is to open a monthly credit in favor of Germany of 20,000,000 francs to be secured by notes responsibly endorsed under the auspices of the *Zentral Einkaufsgenossenschaft* of Berlin, and bearing 6 per cent interest. A somewhat parallel convention was also concluded with France, September 28, 1917, by virtue of which a group of Swiss banks accords to certain associated banks in France a monthly credit of 2,000,000 francs and France grants permission for the exportation from Switzerland of certain articles of luxury (such as chocolate) to the amount of 2,500,000 francs per month; a complementary privilege of importation for certain merchandise from France is conceded, while three trains daily are to be allowed between Geneva and the French port of Cette on the Mediterranean which has become a Swiss *entrepôt* for maritime commerce.

Two important *statutes* have been passed by Parliament: The one on September 25, 1917, is intended to regulate the placing of mortgage liens on railway and steamship lines, and provides for the liquidation of the companies, as well as, in time of war, a suspension (*sursis*) of proceedings. The other statute, originally passed on September 22, 1916, and published by the federal council on December 29, 1916, was by the council (in pursuance of authority given it by art. 76 of the law itself) declared, on April 20, 1917, to be operative January 1, 1918. This highly important act is intended to regulate the country's vast electrical energy pursuant to authority given by the constitutional amendment of 1908 which was noticed at some length in the report made in these columns for that year. The federal council, also, declared in force on December 26, 1917, certain articles of the law regulating military insurance passed December 23, 1914, as a part of the military re-organization intended to be effected by the act of April 12, 1907. Passing by a multitude of emergency measures announced by the federal council to meet the state of exigency produced by the war (the most interesting of which are the elaborate regulations touching the care and consumption of coal, wood and wheat), there is to be noted an important decree of the federal council September 27, 1917, organizing the new federal insurance court at Lucerne and appointing judges for a six-year term; January 1, 1918, having been fixed as the period for the beginning of the court's activities as an organ of the comprehensive federal plan of sickness and accident insurance under the act of June 13, 1911. J. Albisson, of the Lucerne Bar, will act as President, and Paul Piccard, now Clerk (*Greffier*) of the Federal Tribunal at Lausanne, will be Vice-President.

ELECTIONS.

On September 5, 1917, the federal council notified the cantonal governments that the triennial elections for members of the national council would occur on Sunday, October 28, and requesting them to hold such elections and transmit the results to Berne as provided by law. On October 28, accordingly, 162 members were chosen, and on November 11, 18 and 20, there were chosen the remaining 27 members where no *absolute* majority had been obtained on the regular voting day.

December 13, the Houses of Parliament, acting as a united federal assembly, elected the seven members of the federal council for the usual three-year term and re-elected M. Schatzmann, Chancellor, for the same term; M. Félix Calonder was also chosen President and M. Édouard Müller Vice-President for the ensuing year.

CONSTITUTIONAL AMENDMENT IN THE CANTONS.

Canton Zurich has modified its constitution to allow election of the council by proportional representation; Canton Aarau has, in like manner, modified its constitution to permit an increase in cantonal assistance to the communes in school support and the establishing of a minimum teacher's wage by statute. Canton Uri has revised its constitution to effect a re-partition of functions between the executive and judicial branches of the state government responsible to the *Landsgemeinde;* Canton Geneva has, by amendment of its constitution, made possible a communal government by administrative council (city commission) in Geneva City and all communes of over 3000 population, in place of the former plan of a mayor and assessors. March 21, 1917, was observed in Parliament as well as in Upper Unterwalden (Obwald) as the 500th anniversary of the birth in Obwald of Nikolaus von der Fluë, the chief author of the Act of Union of eight cantons in 1421, known as the *Stanzerverkomnis,* one of the great charters of Swiss freedom.

G. E. S.

4. ASIA.

CHINA.

RULE-MAKING FUNCTION OF THE UNITED STATES COURT.

The jurisdiction of the United States Court for China[1] is threefold viz., original, appellate (from the consular courts) and administrative or supervisory. The latter is exercised over all probate and administration causes in the consular courts. Even where there is no appeal, the approval of the United States judge is required before the consular judge may disburse or distribute the funds of an estate.

This administrative or supervisory jurisdiction also includes the rule-making function. As to the United States Court this

[1] See III, A. B. A. JOURNAL, 273 *et seq.*

is expressly conferred by its organic act which, after retaining for the time "the existing procedure prescribed for consular courts," further provides

"That the judge of the said United States Court for China shall have authority from time to time to modify and supplement said rules of procedure."[2]

As to the consular courts the rule-making function was formerly vested in the minister. But the state department has since ruled that the effect of the later legislation has been to transfer it to the judge of the United States Court.

In exercise of this the writer sent out a circular on the subject of rules and appended thereto a draft of "Proposed Rules of Evidence." They are reproduced here partly with the idea that they may be of interest to the readers of THE AMERICAN BAR ASSOCIATION JOURNAL, but more especially in the hope that the comment and suggestion which have been invited from the American Bar and consular judges in China may be participated in some extent by their professional brethren of the homeland. Nothing would be more gratifying to the writer than to have the benefit of the learning and experience of some of our American judges and lawyers in preparing a code of rules for our courts in China.

Soon after sending out the appended draft the writer visited the homeland on leave and while in Chicago was fortunate enough to be able to attend a meeting of the Directors of the American Judicature Society at which its proposed rules of procedure were under consideration. The work of this worthy organization is directly in line with the plan indicated in the foregoing circular and with the help of the tentative rules approved by the former it is hoped to carry out that plan much sooner than would otherwise have been practicable. Indeed it is not impossible that the United States Court for China and its subsidiary courts may be the first group of tribunals to enjoy the benefits of the American Judicature Society's labors for the adoption of judicially framed rules covering the whole field of procedure.

C. S. L.

[2] Act of Congress of June 30, 1906, 34 U. S. Stats. at Large, chap. 3934, pt. I, sec. 5.

U. S. COURT FOR CHINA—ADMINISTRATIVE JURISDICTION—CIRCULAR NO. 4.

PROPOSED RULES OF EVIDENCE.

SHANGHAI, CHINA, July 1, 1917.

To All American Consular Judges, Members of the Bar and others interested:

Gentlemen: In Circular No. 3 of June 1, attention was called to the recent opinion of the state department

"that section 5 of the Act of June 30, 1908, should be construed as effecting a transfer of the authority to modify and supplement existing rules of procedure from the minister to the United States Court for China."

In the same circular it was announced that

"The undersigned has in mind, however, a thorough revision and amplification of the rules governing this court and is collecting material therefor. This would doubtless affect also the procedure of the consular courts and suggestions from the consular judges as to needed changes and improvements are invited."

Several of the consular judges have replied with suggestions and, in view of the urgent need of a revision of rules, which have not even been supplemented for over 20 years, it has been decided to undertake the task at once.

The phrase "existing rules of procedure" used above is a broad one and covers a very extensive branch of the law. A complete revision and restatement of said rules would be almost equivalent to preparing a treatise on practice and, indeed, this is what some of the consular judges have requested. But manifestly such a task cannot be accomplished at once. In view of the other work before this court, administrative as well as judicial, it would probably require years, and meanwhile the deficiencies of the present rules would remain unremedied. A more practical course would seem to be to select those features of procedure in which these rules are most defective and supplement them as rapidly as the time at our disposal, and the consideration required by the importance of the subject, will permit.

The law of evidence is one of the most important of the procedural subjects and at the same time one of the most difficult for the layman to understand and apply. Yet the present rules contain hardly a reference to it save in four brief paragraphs

(75-78) prescribing how oaths are to be administered. Indeed it has never been satisfactorily codified anywhere, though Sir James F. Stephen's draft, which afterward became the Indian Evidence Act, was a good start.

Here then would seem to be a proper point of beginning. If we can secure a satisfactory set of rules expressing, in concise phraseology intelligible to the layman, the fundamental principles of the Anglo-American law of evidence, adapting them to the peculiar needs and conditions of this jurisdiction, we shall have taken a long step toward the framing of that procedural or remedial code which it is hoped one day to promulgate.

Such a step should, however, be taken carefully and with due regard to the opinions of those who are to administer and apply such rules. It has been decided, therefore, to frame first a tentative draft (or as our French colleagues would say a *projêt*) of said rules, submit them to consular judges, members of the Bar, and others interested, invite suggestions and criticisms and give opportunity for full discussion, reserving final promulgation until time is allowed for all to be heard. Such is the method employed by the National Conference of Commissioners on Uniform Laws, which has already done so much toward the codification of our country's law. With this purpose in view the first installment of said proposed rules is hereto appended.

CHARLES S. LOBINGIER,
Judge, U. S. Court for China.

PROPOSED RULES OF EVIDENCE FOR AMERICAN COURTS IN CHINA.

TITLE I. NATURE AND EFFECT.

SECTION 1. *Definition.*—Evidence is the chief[1] means by which the existence or non-existence of an alleged fact is established in a judicial proceeding.[2]

SEC. 2. *Opinions or conclusions* of a witness are not evidence, except those of

[1] Other means are specified in secs. 10-23 *infra*. Argument is also sometimes referred to as one of these means.

[2] A collection of *Common Law definitions*, arranged in historical order, will be found in I Wigmore, Ev., pp. 3-5.

(a) An expert relative to a controverted question of science, art or industry, or foreign, non-statutory, law.

(b) A subscribing witness relative to the mental sanity of the signer of a document whose validity is disputed.

(c) An intimate acquaintance of one whose mental sanity is in dispute, the reason for the opinion relative to the same being given.

(d) A non-expert respecting such common subjects as another's age, appearance, indentity or handwriting concerning which he may have acquired knowledge.

CLASSES.

SEC. 3. *As to intrinsic character,* evidence is called *corroborative* when it tends to support other evidence to the same point, but of a different character, and *cumulative* when it is of the same character to the same point as that already produced; *prima facie* when it suffices for proof until overcome by other evidence, and *conclusive* when it cannot be contradicted. It may be *direct* (leading to the result without the necessity of inference) or *circumstantial* merely establishing facts from which the result may be inferred.

SEC. 4. *As to form,* evidence may be classified as oral, consisting of testimony or evidence given by a witness; documentary, consisting of written evidence; and demonstrative, real or object evidence consisting of miscellaneous objects.

SEC. 5. *As to Witness.*—Testimony, again, is classified as expert and non-expert. The latter must, ordinarily, consist of statements of ultimate facts based upon personal knowledge.

SUFFICIENCY.

SEC. 6. *Quantum of Proof.*—The evidence of a single witness may ordinarily establish any fact. But extra-judicial confessions must be corroborated by proof of the *corpus delicti.*[1] No person may be convicted of treason by any tribunal, unless on the testimony of two witnesses to the same overt act or on confession in open court. Conviction of the crime of perjury requires other

[1] *i. e.*, the fact that the crime was committed. III Encyclopedia of Evidence, 681.

evidence than the testimony of one witness, nor, as a rule, will the accused be convicted upon the testimony of an accomplice alone.[3]

SEC. 7. *Same: Degree.*—In civil actions a preponderance, only, of the evidence is required. In criminal prosecutions the guilt of the accused must be established beyond a reasonable doubt. (31 U. S. Stats. at Large, sec. 673 (5).)

SEC. 8. *Weighing.*—The preponderance of testimony is determined not alone by the number of witnesses, but also by their appearance and demeanor on the stand, their manner of testifying and, so far as legitimately disclosed at the trial, their interest and credibility, their intelligence and capacity, the nature of the facts to which they testify and their opportunities of knowing the same, together with the general probability of their statements. (31 U. S. Stats. at Large, ch. 786, sec. 673 (2); Ga. Code, sec. 5146; Phil. Code, C. P., sec. 273.)

SEC. 9. *Onus Probandi.*—A party must establish every *material* (essential) allegation of his pleading though the substance, only, of the issue need be proved. The burden of proof as to any particular point or issue rests upon the party who would fail if no evidence thereon were offered.

WHAT NEED NOT BE PROVED.

1. Facts Presumed.

SEC. 10. *Presumptions of Regularity and Normality: Generally.*—That events have occurred according to the ordinary course of nature or of business; that a letter or telegram duly sent was received in due course; that the law has been observed and that a fact or condition, of a continuous nature, once proved to exist, continues.

SEC. 11. *Presumptions as to Official Conduct, etc.*—That a public functionary or tribunal is lawfully exercising its powers and jurisdiction; that official (including judicial) duty has been regularly performed; that all matters which were or might have been in issue in a judicial, or *quasi*-judicial, proceeding were laid before the tribunal which heard the same and were passed upon by it; that a published work, purporting to be printed by

[3] 31 U. S. Stats. at Large, ch. 786, sec. 673 (4).

public authority in any country, is such; and that reports of judicial decisions or copies of laws which it purports to contain are correct.

SEC. 12. *Presumptions as to Status.*—That a person is free-born, of lawful age, a citizen of the country within whose territory he resides, and unmarried; that a couple deporting themselves as husband and wife are lawfully married; and that a child is legitimate if born in lawful wedlock.

SEC. 13. *Presumptions as to Individual Conduct.*—That a person is innocent of wrong, but that he knows the law of his jurisdiction and intends the ordinary consequences of his own voluntary acts; and that an unlawful act was committed with unlawful intent; that one possessing, without explanation, the fruits of a crime is implicated therein; that evidence wilfully suppressed would be adverse; that one takes ordinary care to manage his own concerns; that private transactions have been fair and regular; and that acquiescence in a situation resulted from the belief that it was lawful and proper.

SEC. 14. *Presumptions as to Life, Death and Survivorship.*—That life continues for the normal period and that one takes ordinary care to preserve it, but that a person is dead who has not been heard from for seven years or whose will has been admitted to probate, or for whose estate an administrator has been appointed; and where two persons perish in a common disaster, that (1) the elder survived if both were under 15; (2) the younger, if both were over 60, or one under 15 and the other over 60; (3) the male if both were between 15 and 60, or the elder if the sex were the same; (4) the one between 15 and 60 if the other was over or under. (French Civ. Code, arts. 720-722; Cal. Code C. P., sec. 1908 (1); Phil. Code C. P., sec. 306 (1); P. R. Ev. Act, sec. 59 (1).)

SEC. 15. *Presumptions as to Obligations.*—That a document is duly dated; that the indorsement of a negotiable promissory note or bill was made at the place, but after the time, of executing the instrument, and that such indorsement and execution as well as the making of all written contracts was for a valid consideration; that a document more than 30 years old, whose custody is satisfactorily explained, and which is generally received by parties interested therein as genuine, is such; that the terms

of a written instrument are used in their ordinary and generally accepted meaning in the place of its execution, and that if printed words, inconsistent with the written, are used, the latter were intended to control; that all provisions of such instruments were intended to be effective, but that a particular provision or intent should prevail over a general and inconsistent one; that ambiguous language was intended to be construed in favor of, rather than against, a natural right, against the party who originated the phraseology and in favor of the one for whose benefit it was used; that a written obligation is individual rather than joint, and, if in the debtor's possession, has been discharged; that installments of a debt have been paid if receipt for a subsequent one is produced; that persons acting as partners are such; and that an agent's authority includes the necessary means of its exercise.

SEC. 16. *Presumptions of Identity.*—That persons and things of the same name are identical, and that the substantive law of other countries under a similar system is the same as the *lex fori.*

SEC. 17. *Conflicting Presumptions.*—Where two presumptions of equal force conflict they offset each other; if not of equal force, the stronger prevails.

2. Facts Judicially Noticed.

SEC. 18. *Political.*—The existence, titles, boundaries, and territorial extent of sovereign states, their forms of government, symbols of nationality, the status of their dependencies, the political subdivisions of the jurisdiction as fixed by statute, the seals of the several states, and of the world's maritime courts.

SEC. 19. *Legal.*—International law, the general maritime law, and the jurisdiction, rules of procedure, and seals of all courts administering the same, treaties between sovereign powers, constitutions, public statutes and proclamations and the entire domestic but not foreign law.

SEC. 20. *Official.*—The existence, powers and duties, identity seals, terms of office, including commencement and end, and date of election or appointment of the principal officers, including judges, provided for by the laws of the jurisdiction, official acts, proceedings of general, public interest, including an official census or survey, legislative journals, the administrative regulations of

executive departments of the government and the court record of the case in judgment.

SEC. 21. *Physical.*—The laws and course of nature, the succession of the seasons, the movements of celestial bodies, the general properties of matter, the common facts relating to animal and vegetable life, the law of average as established by statistics, the physical features of the country, their ports and tidewaters, and the distance and time of travel between the various localities thereof.

SEC. 22. *Social and industrial* customs prevailing generally throughout a community, the vernacular language and the meaning of ordinary words, phrases and abbreviations therein, the computation of time, the legal standard of weights, measures and values, the circulating medium, matters of public history, and of the local history, of communities within the court's jurisdiction, and, generally, matters within the common experience or knowledge of persons of ordinary intelligence. (Cal. Code C. P., sec. 1875; N. D. Rev. Code (1905); Phil. Code C. P., sec. 275; P. R. Ev. Act, sec. 36.)

3. Facts Admitted.

SEC. 23. *General Rule.*—Facts admitted either expressly, or by failure to deny when well pleaded, need not be proved. But no decree of divorce or annulment of marriage can be based solely upon the respondent's confession. (31 U. S. Stats. at Large, ch. 786, sec. 684.)

TITLE II. ADMISSIBILITY.

SEC. 24. (A) *Generally.*—Only evidence actually admitted can be considered. But evidence introduced by one party is available to the other. Erroneous admission or exclusion of evidence, if prejudicial, is reversible error, but not where there is sufficient competent evidence to support the judgment. The admission of incompetent testimony without objection entitles it to be considered for what it is worth.

(B) PRINCIPLES OF EXCLUSION.

1. Fundamental Requirements.

SEC. 25. (a) *Relevancy: General Rule.*—Evidence must be pertinent and relevant to the material issues raised by the pleadings.

SEC. 26. *Basis of Inference or Presumption.*—Evidence is, however, admissible not alone as to the precise fact in dispute, but also as to any other facts from which the same is presumed or logically inferable. (Cal. Code C. P., sec. 1870 (1, 15); Phil. Code C. P., sec. 298 (1, 15); P. R. Ev. Act, sec. 34 (1, 13).)

SEC. 27. *Collateral Inquires.*—It is also discretionary with the court to permit inquiry into collateral matters directly connected with the issues and essential to their proper determination.

SEC. 28. *Same: Usage.*—Evidence of usage is admissible, but only to explain the character, not otherwise clear, of an act, transaction or instrument.

SEC. 29. *Same: Character*[1] *of the Parties.*—In civil causes evidence of a party's good character is not admissible unless the latter has been impeached or is directly in issue. In criminal causes the accused may introduce evidence of his good character which the prosecution may meet with evidence of his bad character.

SEC. 30. (b) *Originality.*—Evidence must be the "best" (most original or primary) attainable.

(1) HEARSAY EXCLUDED.

SEC. 31. (a) *General Rule.*—Statements, oral or written, by one not called as a witness, are deemed hearsay and are generally inadmissible. (II Wigmore, Ev., secs. 1360 *et seq.;* Stephen's Digest of the Law of Ev., art. 14.)

(b) Exceptions.

(aa) Principally on the Ground of Trustworthiness.

SEC. 32. *Declarations Against Interest.*—Evidence of the declaration, entry, act, or other conduct of a decedent, having sufficient knowledge of the subject, against his pecuniary interest, is, to that extent, admissible against his successor in interest.

SEC. 33. *Admissions.*—Evidence of a declaration, act or course of conduct by a party himself or, actually or constructively, by his authority, or by one identified in interest with him as agent, grantee, partner, co-owner, co-obligor, or, in a criminal cause,

[1] In the law of evidence the word as generally used, means "reputation as distinguished from disposition." Stephen, Dig. of Ev., art. 56.

as co-conspirator, or otherwise, and within the scope of such relation, or acquiesced in by such party, by silence when it was his duty to speak, or otherwise, is admissible against him, or, if made in respect to property while the declarant holds title thereto, against his successor in interest.

SEC. 34. *Extrajudicial confessions* of the accused in a criminal cause are admissible when shown to have been made freely and voluntarily and not as the result of intimidation, violence, threat, or promises or offers of reward or leniency.

SEC. 35. *Dying Declarations.*—In prosecutions for causing declarant's death his voluntary statement as to the cause thereof or any circumstance connected therewith is admissible, if made while the deceased was of sane mind, conscious of approaching death and without hope of recovery.

(bb) Principally on the Ground of Necessity or Convenience.

SEC. 36. *Public Records.*—Hearsay evidence is admissible respecting matters of the public and general interest and those more than 30 years old.

SEC. 37. *Public Records.*—Entries in public or other official books or records by a public official or other person, in the performance of a duty specially enjoined by law are admissible.

SEC. 38. *Pedigree*[1] may be proved by:

(a) Public or family records, and other authentic documents.

(b) The declaration, act or course of conduct of a deceased or absent member of the family.

(c) Common reputation existing previous to the controversy.

SEC. 39. *Books of account* showing continuous dealings with persons generally, and containing original entries of charges at different times, by one party against the other, made by the party or his clerk, in the ordinary course of business, at or near the time of the transaction, are admissible in evidence if duly authenticated by the oath of the person making the entries or otherwise.

[1] *Scope.*—"The term pedigree embraces not only descent and relationship, but also the facts of birth, marriage and death and the times when these events happened. These facts, therefore, may be proved in the manner above mentioned *in all cases where they occur incidentally and in relation to pedigree.*" Greenleaf Ev. I, sec. 104. The clause in italics does not appear in the first edition (1842).

SEC. 40. *Decedent's Declarations in Course of Duty.*—The statements, entries and other writings of a deceased person, in a position to know the facts, are admissible if made at or near the time of the transaction, in a professional capacity or course of conduct, or in the performance of ordinary and regular private or official duty.

SEC. 41. *Learned Treatises.*—Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are *prima facie* evidence of facts of general notoriety and interest.

SEC. 42. *Testimony at a former proceeding,* civil or criminal, is admissible if duly taken, where the parties and questions at issue were substantially the same as in the cause pending, and the witness is dead, physically or mentally incapable of attending or testifying, absent from the jurisdiction or inaccessible.

SEC. 43. *Res Gestæ.*—A declaration, act of course of conduct forming part of a transaction which is itself a fact in dispute, or evidence of that fact, is admissible as part of the *res gestæ.*

SEC. 44. *Expressions of existing bodily or mental feelings,* constituting a material issue, are admissible under certain restrictions, even when not technically part of the *res gestæ.*

SEC. 45. *Declarations of a testator* made within a reasonable time before and after the execution of his will are admissible to show his mental condition or his intent as to alteration, and even to supplement other proof of contents, though not to supply such proof exclusively, nor to show execution.

SEC. 46. *General Declarations of Intent.*—A person's intent, when a distinct and material fact, may be proved by his own contemporaneous declarations, oral or written.

(2) SECONDARY EVIDENCE OF WRITINGS EXCLUDED.

SEC. 47. *General Rule.—Secondary evidence is inadmissible of the contents of a writing.*

SEC. 48. *Exceptions.*—But such evidence may be received when the original:

(a) Has been lost or destroyed or is beyond the jurisdiction of the court, or is not easily movable.

(b) Consists of numerous accounts or documents not conveniently examinable in court, and the proposed evidence is only the general result of the whole and is calculable.

(c) Is an official document or the public record of the acts of public officers, bodies or tribunals or of a public or private writing.

(d) Is in the possession, under the control, or kept away by the fraud, of one who fails to produce it upon reasonable notice.

(3) PAROL VARIATION EXCLUDED.

SEC. 49. *General Rule.*—Secondary evidence is inadmissible between the parties to affect the terms of a written agreement *except*

(a) To prove the circumstances under which it was made.

(b) To correct mistakes, explain ambiguity or supply omissions or other grounds of incompleteness or imperfection.

(c) To establish illegality, fraud or other grounds of invalidity.

2. Evidence Excluded from Public Policy and Other Reasons.

SEC. 50. *Official Communications.*—A public officer cannot testify as to communications made to him in official confidence if public interests would suffer thereby. (Cal. Code C. P., sec. 1881 (5); Phil. Code C. P., sec. 383 (6); Hartranft's Appeal, 85 Pa. St. 433; Thayer's Cas. 1176 (1878).)

SEC. 51. *Marital Affairs.*—One spouse cannot, without the other's consent, testify for or against the other nor as to communications between them during marriage, except in a prosecution for a crime committed, or a civil action, by one against the other. (31 U. S. Stats. at Large, ch. 786, sec. 1035; Cal. Code C. P., sec. 1881 (1); Phil. Code C. P. sec. 383 (3).)

SEC. 52. *Impeaching Legitimacy.*—Evidence is inadmissible to show the illegitimacy of issue born more than 180 days after marriage or less than 300 days after its dissolution, the wife cohabiting with her husband and the latter not being impotent. (Cal. Code C. P., sec. 1962 (5); Phil. Code C. P., sec. 333 (3).)

SEC. 53. *Professional Secrets.*—No attorney may, without his client's consent, testify as to communications between them in the course of professional employment nor, without the consent of both, may an attorney's clerk or other employee testify to any fact learned in such capacity. (31 U. S. Stats. at Large, ch. 786, sec. 1036; Cal. Code C. P., sec. 1881 (2); Phil. Code C. P., sec. 383 (4); P. R. Ev. Act, sec. 40 (2).)

SEC. 54. *Medical Secrets.*—No person duly authorized to practice medicine, surgery or obstetrics shall be compelled, without the consent of the patient, in any civil case, to disclose any information acquired in attending such patient in a professional capacity, and necessary to enable him so to act, but which might injure the patient's reputation. (31 U. S. Stats. at Large, ch. 786, sec. 1038; N. Y. Code C. P.; Cal. Code C. P., sec. 1881 (4); Phil. Act 2252; P. R. Ev. Act, sec. 40 (4).)

SEC. 55. *Occurrences before Defendant's Disability or Death.*—Parties (or their assignors or beneficiaries) to any proceeding upon a claim against a person of unsound mind or the estate of a decedent cannot testify therein as to occurrences before the disability or death relating to said claim. (Cal. Code C. P., sec. 1880 (3); Phil. Code, C. P., sec. 383 (7).)

SEC. 56. *An offer of compromise* is inadmissible. (31 U. S. Stats. at Large, ch. 786, sec. 683; Cal. Code C. P., sec. 2076; Phil. Code C. P., sec 349.)

SEC. 57. *Impeaching Landlord's Title.*—Evidence is not admissible in behalf of a tenant tending to disparage his landlord's title at the time of the commencement of the relation between them. (Cal. Code C. P., sec. 1962 (4); Phil. Code C. P., sec. 332 (2); P. R. Ev. Act, sec. 101 (4).)

SEC. 58. *Estoppel.*—Evidence is inadmissible in behalf of a party to litigation arising out of any declaration, act or omission of his, to contradict the same, if he has thereby intentionally led another to believe and act thereon. (Cal. Code C. P., sec. 1962 (3); Phil. Code C. P., sec. 333 (1).)

TITLE III. INSTRUMENTS AND PRODUCTION.

SEC. 59. *In General.*—The instruments of evidence, or means of proof, are (A) witnesses, (B) documents and (C) real, demonstrative or object evidence.

A. WITNESSES.

1. In General.

SEC. 60. *Qualifications.*—All persons with organs of sense, capable of perceiving and making known their perceptions, may be witnesses. Those of unsound mind and children, not so capable, are incompetent to testify. No disqualification results

from religious opinions, conviction of crime or interest, though the two latter circumstances and other competent evidence may be considered as affecting credibility. (31 U. S. Stats. at Large, ch. 786, secs. 1033, 1034; Cal. Code C. P., secs. 1879-81; Phil. Code C. P., secs. 382-3; G. O. 58, sec. 55; P. R. Ev. Act, secs. 38, 39; Utah Rev. Stats., sec. 3412.)

SEC. 61. *Accused's Right of Confrontation.*—In all criminal prosecutions the accused is entitled to be confronted by, and to cross-examine, the witnesses against him. But where this opportunity has once been given, and the witness is deaf or insane, or cannot, with due diligence, be found in the jurisdiction, his deposition may be read. (Phil. Bill, sec. 5; G. O. 58, sec. 15 (5); P. R. Code Crim. Proc., sec. 11 (4); II Wigmore, Ev., sec. 1397.)

SEC. 62. *Place of Testifying.*—Except as otherwise provided by law, all testimony shall be given orally, in open court. (U. S. Rev. Stats., sec. 861.)

2. Attendance.

SEC. 63. *One actually present* at the proceeding may be required to testify without subpœna. (31 U. S. Stats. at Large, ch. 786, sec. 631; Cal. Code C. P., sec. 1990; Phil. Code C. P., sec. 407; P. R. Ev. Act 115.)

SEC. 64. *Subpœna* is the process by which the attendance of a witness is required. It must be directed to him and specify the time and place of testifying. It may also require him to produce books, documents or other articles under his control and is then called a subpœna *duces tecum*. (31 U. S. Stats. at Large, ch. 786, sec. 624; Cal. Code C. P., sec. 1985; Phil. Code C. P., sec. 402; Wigmore, Ev., secs. 2199, 2200.)

Form: (Caption as in Form) *Subpœna.* "To.....
.....
..... of .....
Greeting:

You are hereby commanded to be and appear in the above named court at.....on the .....
day of.....191....at.....o'clock in the.....
then and there to testify in the cause of.....against.....
there pending.

(For subpœna *duces tecum* add: "and to bring with you into court the following described (book, deed, writing, or other document) it being necessary to use the same as evidence in said cause).

Fail not, under penalty of the law.

Witness, the Honorable ..... Judge of said court, this ..... day of ..... 19...

.....Clerk."

SEC. 65. *Issuance.*—A judge or other officer empowered to take testimony may issue a subpœna to require attendance within his territorial jurisdiction before himself or such other officer. If attendance is required before a court having a seal and a clerk the subpœna must be issued under such seal and signed by such clerk or by the judge. (31 U. S. Stats. at Large, ch. 786, sec. 625; Cal. Code C. P., sec. 1986; Phil. Code C. P., secs. 366, 403.)

SEC. 66. *Service* of a subpœna is made by delivering personally to the witness a true copy, attested to be such by the person serving it, who may be any one specially authorized by the functionary issuing it, as well as the marshal or his deputy. Service must be made so as to allow the witness reasonable time for preparation and travel to the place of attendance. (31 U. S. Stats. at Large, ch. 786, sec. 627; Cal. Code C. P., sec. 1987; Phil. Code C. P., secs. 68, 404.)

SEC. 67. *Enforcing Obedience.*—In case of the failure of a witness to attend, the court issuing the subpœna may, upon proof of service thereof and of such non-attendance, issue a warrant to arrest the party subpœnaed and bring him before the proper court or officer. Disobedience of a subpœna, refusal to be sworn, to answer questions, or to subscribe a deposition when required, may be punished as contempt by the court issuing the subpœna. If the contumacious witness be a party his pleading may also be stricken out. All costs in proceedings to punish for such disobedience are taxable against the party found guilty therein (31 U. S. Stats. at Large, ch. 786, secs. 623 *et seq.*; Cal. Code C. P., secs. 1991, 1993; Phil. Code C. P., secs. 408, 440; P. R. Ev. Act, sec. 116.)

3. Examination.

A. FORENSIC.

SEC. 68. *Oath: form.*—Every witness before testifying must take an oath or affirmation as follows:

"You do solemnly swear (or affirm) that the testimony you are about to give in the cause on trial shall be the truth, the whole truth and nothing but the truth, so help you God."

SEC. 69. *How Administered.*—The oath must be administered in a language understood by the witness and with the most appropriate sanction, if there be one, of his particular religious belief. (31 U. S. Stats. at Large, ch. 786, secs. 661, 694-7; Consular Court Regulations, 75, 76.)

SEC. 70. *Violation of Oath: Perjury.*—Every person, who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars and by imprisonment at hard labor for not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (U. S. Rev. Stats., sec. 5392; Phil. Act 1697, sec. 3; P. R. Penal Code, sec. 117.)

SEC. 71. *Subornation of Perjury.*—Every person who causes or procures another person to commit any perjury is guilty of subornation of perjury and punishable as in the preceding section prescribed. (U. S. Rev. Stats., sec. 5393; Phil. Act 1697, sec. 4.)

SEC. 72. *The exclusion of witnesses* other than the parties and the one testifying may be demanded by either party or directed by the court upon its own motion. (31 U. S. Stats. at large, ch. 786, sec. 660; III Wigmore, Ev., secs. 1838, 1839, containing an interesting historical account of the practice.)

SEC. 73. *Order of Proof.*—Ordinarily the party holding the burden of proof must first present his *case in chief;* the adverse party then makes his *defense,* after which the former may offer evidence in *rebuttal* (which must be confined strictly to the refutation of new evidence brought out by the defense) and the latter in turn, evidence in *surrebuttal,* correspondingly restricted. The trial court has discretion, however, to vary this order. (31 U. S. Stats. at Large, ch. 786, sec. 659; Cal. Code C. P., sec. 607;

Phil. Code C. P., secs. 56, 132 (1, 2, 3); III Wigmore, Ev., secs. 1866 *et seq.*)

SEC. 74. *Same: As to Individual Witness.*—The *direct* examination is that conducted on behalf of the party calling the witness. It may always be followed by cross-examination by the adverse party upon the same subject. This right is to be liberally construed, but its restriction within proper limits is discretionary with the trial court.

Redirect and *recross* may follow, but neither *direct* nor *cross* may be repeated, nor a witness recalled, without leave of court, which is likewise discretionary. (31 U. S. Stats. at Large. ch. 786, sec. 663. Cf. III Wigmore, Ev., secs. 1882 *et seq.*)

SEC. 75. *Leading questions* (those which suggest the answer sought) are permissible on strict cross-examination, but not elsewhere, unless, in the discretion of the court, the interests of justice appear so to require. 31 U. S. Stats. at Large, ch. 786, secs. 664, 666; Cal. Code C. P., secs. 2046, 2048; Phil. Code C. P., secs. 337, 339; P. R. Ev. Act, sec. 153; I Wigmore, Ev., secs. 769 *et seq.*)

SEC. 76. *Complementary Evidence.*—When an act, declaration, conversation, or document, or part thereof, is the subject of testimony the adverse party may introduce evidence of the remainder or of any fact necessary to make the former intelligible. (Cal. Code C. P., sec. 1854; Phil. Code C. P., sec. 283.)

SEC. 77. *Refreshing Recollection.*—A witness may refresh his recollection by contemporaneous memoranda prepared by himself, or under his direction, if he is able to swear to its correctness when made, though if he retain no recollection of the facts contained therein his testimony must be received with caution. (31 U. S. Stats. at Large, ch. 786, sec. 665; Cal. Code C. P., sec. 2047; Phil. Code C. P., sec. 338; P. R. Ev. Act, sec. 154; I Wigmore, Ev., secs. 744 *et seq.*)

SEC. 78. *Impeachment Contradiction.*—A witness may be impeached by evidence contradicting his statement or tending to show that he has at other times made statements inconsistent therewith. Such statements must first be repeated (or if in writing, shown) to him, the circumstances detailed and the witness be asked if he made the statements and allowed to explain. (31 U. S. Stats. at Large, ch. 786, sec. 670; Cal. Code C. P., secs. 2051-2,

2049, 1870 (16); C. P., secs. 342-3, 340, 298 (16); Eng. Stat. 17 & 18 Vict., c. 125, s. 22; Mass. Stat. 1869, c. 425.)

SEC. 79. *Same: Character.*—A witness may be impeached by the adverse party, but not by the one producing him, by evidence that his general reputation for veracity is bad, or that he has been convicted of a felony. Other evidence of specific wrongful acts is not admissible, nor is evidence of good character, until after such impeachment. (31 U. S. Stats. at Large, ch. 786, secs. 617, 619; Cal. Code C. P., secs. 2051-2; Phil. Code C. P., secs. 340, 342; P. R. Ev. Act, sec. 158; II Wigmore, Ev., sec. 987.)

SEC. 80. *A witness must answer* proper questions, though his answer may tend to establish a claim against himself. (31 U. S. Stats. at Large, ch. 786, sec. 675.)

SEC. 81. *Privilege.* A witness need not give an answer which directly tends to subject him to punishment for felony, nor shall the accused, in any criminal case, be compelled to be a witness against himself. But the privilege is personal and may be waived. (*Id.*) See III Wigmore, Ev., secs. 2250 *et seq.* The Ohio Constitution of 1912 abolishes the privilege. See an argument for its abolition elsewhere, in *McClure's,* November, 1912, by Judge Corrigan of New York.

SEC. 82. *Record.*—In all cases, criminal and civil, the evidence shall be taken down in writing in open court, and all objections to the competency or character of testimony shall be noted, with rulings, all of which shall form part of the record.[1] Other forms of evidence, documentary and real, are identified or marked as "exhibits"; but these must be formally offered and received before they become part of the record. On appeal the entire record must be forwarded.

B. DEPOSITIONS.

(1) De bene esse.

SEC. 83. *When Taken.*—A deposition may be taken at any time after the service of summons or appearance of the defendant in a civil action, or, in a special proceeding, after the question of fact has arisen, when the proposed witness:

(a) Is a party, or an officer or member of a corporation, which is a party to the action or proceeding, or one for whose immediate benefit the same is prosecuted or defended.

[1] U. S. Rev. Stats., sec. 4097.

(b) Resides, or is about to go, more than 100 miles from the place of trial.

(c) Is too infirm, or otherwise physically unable, to attend.

(d) Need not be orally examined, as when the evidence is required upon a motion.

(e) Is the only one who can establish facts of a fact material to the issue.

(U. S. Rev. Stats., sec. 863; 31 U. S. Stats. at Large, ch. 786, sec. 644; Cal. Code C. P., sec. 2021; Phil. Code, C. P., sec. 355; P. R. Ev. Act, sec. 144.)

SEC. 84. *Who May Take.*—A deposition may be taken locally before any judge, minister, consul or United States commissioner, or, if it is to be used outside the jurisdiction, it may also be taken before a commissioner named by the court or a judge thereof, wherein the action therein is pending, or for local use, it may be taken in the United States, before a notary public, justice of the peace, federal or state judge, commissioner authorized by the United States laws to take depositions, or other person agreed upon by the parties named in a commission issued from the court or a judge thereof wherein the action or proceeding is pending, or, in any country outside United States territory, before any person so agreed upon and named, or before an American diplomatic or consular representative, provided that such person is in no way interested in the cause. (U. S. Rev. Stats., sec. 863; Cal. Code C. P., sec. 2031; Phil. Code C. P., sec. 301; P. R. Ev. Act, sec. 143.)

SEC. 85. *The commission* may issue at the application of either party upon five days' notice to the other, under seal of the court, and must authorize the commissioner to swear the witness and take his deposition in answer to such annexed interrogatories, direct and cross, as have been prepared by the parties, or in case of disagreement as to their form, settled by the judge who signed the commission, or, in answer to oral questions respecting the matter in dispute if written interrogatories have been waived by agreement; and to certify the deposition to the court in a sealed enclosure directed to the clerk or other person greed upon. (31 U. S. Stats. at Large, ch. 786, secs. 646 *et seq.;* Cal. Code C. P., secs. 2025-6; Phil. Code C. P., secs. 257-8; P. R. Ev. Act, secs. 138-40.)

Form of Commission.—(Caption and title as in form No. .)

To .....

It appearing to the court that John Doe, of....., is a material witness in the trial of the above entitled cause now pending in this court, and that his personal attendance at said trial cannot be procured.

Now, therefore, we, confiding in your prudence and fidelity, have appointed, and by these presents do appoint, you as commissioner to examine said witness; and we therefore authorize and empower you at certain times and places to be by you designated for that purpose, diligently to examine said witness on the direct and cross interrogatories annexed to this commission (or, if none such are filed, in respect to the question in dispute), upon oath first taken before you, which you are hereby empowered to administer, and to cause the said examination to be reduced to writing, subscribed by the said witness and by yourself, and then returned to this court with said commission attached and enclosed under your seal, with all convenient speed.

Witness the Hon.....Judge of the..... day of.....19....

.....Judge.

Attest my hand and seal of the said court this..... day of ..... 19.....

.....Clerk.

SEC. 86. *Notice.*—The party seeking to have the deposition taken must serve on the adverse party or his attorney of record a notice of the time and place of examination, the name of the officer and of the witness. Such notice must be served at least three days before the day of examination and for each additional 25 miles above the first 25 from the place thereof, one day more. (31 U. S. Stats. at Large, ch. 786, sec. 652.)

Form of Notice.—(Caption and title as in form No. .)

To .....

(Attorney for .....)

You are hereby notified that the deposition of..... a necessary and material witness for the ..... (plaintiff or defendant, as the case may be), to be used in the trial of the above entitled cause, will be taken before..... in and for the Consular District of..... at his office in .....in said District on the ..... day of ....., 19....., between the hours

of ..... o'clock in the forenoon and ..... o'clock in the afternoon of said day, commencing at the first named hour, and if not completed on said day, will be continued at said place and between said hours, from time to time (over Sundays and holidays if necessary) thereafter successively until completed.

Dated at .....this ..... day of 19....

.....

(or attorney for.....)

SEC. 87. *Same: Exceptions.*—The judge of the United States Court for China may, in cases of urgent necessity, authorize depositions to be taken upon such notice as he may think reasonable, causing an order to that effect to be served with the notice. (U. S. Rev. Stats., sec. 863; 31 U. S. Stats. at Large, ch. 786, sec. 652.)

SEC. 88. *Taking and Transmittal.*—Either party may attend the examination and, personally or by attorney, question the witness, who shall first be sworn as if testifying in court. The testimony shall be written by the presiding officer or by the witness or some disinterested person in his presence and under his direction, and may be taken down in shorthand, but must forthwith be reproduced in longhand. When completed the deposition must be carefully read to or by the witness, may be corrected, and must be subscribed by him. The officer presiding at the examination must certify that these requirements have been observed and deliver or send the deposition so certified in a sealed enclosure to the clerk of the court in which the action is pending. (U. S. Rev. Stats., secs. 864 *et seq.;* 31 U. S. Stats. at Large, ch. 788, secs. 653 *et seq.;* Cal. Code C. P., sec. 2032.)

Form of Caption.—

UNITED STATES OF AMERICA.
Extraterritorial Jurisdiction in China.
Consular District of .....

..... Plaintiff, *vs.* ..... Defendant.	Depositions.

Depositions of sundry witnesses taken before me, a.....
in said district.....on the.....day of.....

in the year.....between the hours of.....A. M. and..... P. M., at .....in said district, pursuant to the annexed notice, to be read in evidence on behalf of the..... in an action pending in the.....Court of....., in which ..... plaintiff, and ..... defendant, ... of lawful age, being by me first duly examined, cautioned, and solemnly sworn, as hereinafter certified, deposes and says as follows viz.: .....
.....
.....

Form of Certificate. (Caption as in Form .....),

I, ... a ..... duly .....and qualified, do hereby certify that ..... was by me first severally duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition..... by ..... respectively subscribed as above set forth, ... and respectively subscribed by the said witness ....., taken at the time and place in the annexed notice specified; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit; and that said deposition..... ..... commenced at the time in said notice specified .....
.....

In Testimony Whereof, I have hereunto set my hand and official seal at ..... this ..... day of..... 19.....
.....
.....
.....

SEC. 89. *Use.*—Unless it appears at the time that the presence of the deponent can be procured, or that the taking of the deposition would be unfair or fraudulent, it may be used by either party as his evidence and subject to objection at any stage of the pending action of proceeding, or any other between the same parties and involving the same subject matter. A party who appears at an examination shall not be heard to complain of the form of a question unless his objection shall have been made at the time, and any objections to the form of interrogatories, to be propounded to a witness outside the jurisdiction, must first be presented to the court issuing the commission. The failure to receive such deposition shall not require a postponement of the

trial without a satisfactory showing that the testimony is necessary and that proper diligence has been used to obtain it. (U. S. Rev. Stats. 865 *et seq.;* 31 U. S. Stats. at Large, secs. 656-658; Cal. Code C. P., sec. 2034; Phil. Code C. P., sec 355; P. R. Ev. Act, sec. 144.)

(2) In Perpetuam Rei.

SEC. 90. *When Authorized.*—The judge of the United States Court for China may make an order for perpetuating the testimony of a witness, before himself or the consular judge of the proper district upon the filing of a duly verified petition, reciting:

(a) That the applicant expects to be a party to an action in a court of the jurisdiction; or, if no such action is actually anticipated, that proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which might become material to him.

(b) The names, if known, of those who may be adverse parties to the action, if anticipated.

(c) The name, residence, and general outline of the testimony expected of the witness. (31 U. S. Stats. at Large, ch. 786, secs. 685 *et seq.;* Cal. Code C. P., sec. 2084; Phil. Code C. P., sec. 370.)

SEC. 91. *Notice.*—If the parties expectant are known and reside within the jurisdiction each must be personally served with reasonable notice of the time and place fixed for hearing; if unknown, and property within said jurisdiction may be affected by the proceedings, notice must be served by publication in the same manner as a summons. (31 U. S. Stats. at Large, ch. 786, sec. 687; Cal. Code C. P., sec. 2084; Phil. Code C. P., sec. 371.)

SEC. 92. *Taking and Transmittal.*—The testimony shall, at the time and place fixed, be taken and transmitted according to the rules prescribed in sec. 88 for taking depositions, except that the entire record, including petition, notice and testimony, shall be transmitted to, and filed with, the clerk of the United States Court for China, and shall be *prima facie* evidence of the manner in which the proceedings were conducted. (31 U. S. Stats. at Large, ch. 786, secs. 688, 689, 692; Cal. Code C. P., secs. 2086, 2087; Phil. Code C. P., secs. 372, 373, 374.)

SEC. 93. *Use.*—The testimony so taken shall have the same effect as if given orally by the witness and may be used, subject to the rules provided for the use of depositions, in any action or proceeding against the parties named in the petition or those whose interest had not been discovered at the time of the filing thereof. (31 U. S. Stats. at Large, ch. 786, secs. 690, 691; Cal. Code C. P., secs. 2088, 2089; Phil. Code C. P., secs. 375-6.)

C. AFFIDAVITS.

SEC. 94. *Definition.*—An affidavit is an *ex parte* statement in writing, sworn to, or affirmed, before an officer authorized to administer oaths. It differs from a deposition in not being taken on notice nor providing opportunity for cross-examination. (3 Corpus Juris, 317, 318.)

SEC. 95. *When Used.*—Affidavits may be used in support of a motion or to prove the publication [1] or service of a notice or the service of process or other papers, in a proceeding for provisional remedy,[2] the examination of a witness or a stay, or in any other case expressly provided by law. (31 U. S. Stats. at Large, ch. 786, secs. 638, 641; Cal. Code C. P., sec. 2009; Phil. Code C. P., sec. 348.)

B. DOCUMENTS.

1. Proof of Execution.

SEC. 96. *General Rule.*—The execution of any writing may be proved by:

(a) One who saw it executed.

(b) Evidence of the genuineness of the maker's handwriting.

(c) A subscribing witness, or,

(d) Where the latter denies, or fails to recollect, such execution, other competent evidence. (Cal. Code C. P., secs. 1940, 1941; Phil. Code C. P., secs. 324-5; P. R. Ev. Act, sec. 87.)

[1] Affidavit of printer, foreman or principal clerk, annexed to a copy of the notice, specifying the paper and the dates of publication if made within six months after the last date is sufficient. (31 U. S. Stats. at Large, ch. 786, sec. 640; Cal. Code C. P., sec. 2010.)

[2] Upon demand of the adverse party the affiant must be produced before competent authority for cross-examination within eight days or the effect of the affidavit is lost. (31 U. S. Stats. at Large, ch. 786, sec. 639.)

SEC. 97. *Proof of execution is unnecessary* where it is shown that the party against whom the writing is offered has admitted its execution, or that it is produced from his custody and has been acted upon by him as genuine, if more than 30 years old. (Cal. Code C. P., secs. 1942, 1945; Phil. Code C. P., sec. 326; P. R. Ev. Act, secs. 89, 92.)

SEC. 98. *Proof of a person's handwriting* may be made by the testimony of one who believes it to be his and has either seen him write or has seen writing purporting to be his and upon which the supposed writer has acted or been charged. The court may also (with or without the aid of experts) compare any proffered writing with others proved to be genuine or so admitted or treated by the party against whom the offer is made, or, if the proffered writing is more than 30 years old, and purports to be genuine, by those having an interest in knowing the fact. (Cal. Code C. P., secs. 1943-5; Phil. Code C. P., sec. 327; P. R. Ev. Act, secs. 90, 92.)

SEC. 99. *An alteration* or appearance of alteration, after execution, in a part material to the question in dispute, renders a writing inadmissible until shown to have been made by consent of all parties affected, or without the concurrence of the one offering it, or of his privies, or otherwise innocently or properly, or not to have changed the meaning or effect. (Cal. Code C. P., sec. 1982; Phil. Code C. P., sec. 336.)

2. Proof of Contents.

SEC. 100. *Originals.*—The contents of a document if otherwise competent may always be proved by producing the original. (Cal. Code C. P., secs. 1905, 1918 (6, 7, 8) 1951; Phil. Code C. P., secs. 298 (14), 303, 313 (6, 7, 8), 331; P. R. Ev. Act, secs. 56, 69.)

SEC. 101. *Public Records: Certified Copies.*—The contents of any official document or of the public record of the acts of public officers, bodies or tribunals or of a public or private writing may be proved by a copy thereof, certified to be a correct transcript of the original by its legal custodian under the seal, if there be one, of his office or court. (31 U. S. Stats. at Large, ch. 786, sec. 1040; cf. U. S. Rev. Stats., secs. 905-907; Cal. Code C. P., secs. 1918, 1919, 1923; Phil. Code C. P., secs. 313, 314, 318; P. R. Ev. Act, secs. 69, 70, 73-75.)

SEC. 102. *Same: Examined*[1] *Copies.*—A copy of a judicial record of a foreign country is also admissible in evidence upon proof that:

(a) It has been compared by the witness with the original and is an exact transcript thereof.

(b) Such original was in the custody of the clerk or other legal custodian thereof.

(c) The seal, if there be one, of the court where the record remains, or, if it be not a court of record, the signature of the legal custodian, attests the copy. (Cal. Code C. P., sec. 1907; Phil. Code C. P., sec. 305.)

SEC. 103. *Printed Copies.*—Books printed or published under public authority and purporting to contain the statute law of a state or country, or the reports of judicial decisions thereof, and proved to be commonly received in the tribunals thereof as evidence of such law or decisions are so admissible here. (Cal. Code C. P., secs. 1900, 1902; Phil. Code C. P., secs. 300, 302.)

SEC. 104. *Ordinary Copies.*—In other cases, after proof of the conditions justifying secondary evidence and of due execution, the contents of a document may be shown by an ordinary copy.

SEC. 105. *Testimony.*—In such cases the contents may also be proved by a witness.

SEC. 106. *Notice to Produce.*—Where a document is in another's possession he is entitled to reasonable notice to produce it, unless it is itself a notice. (Cal. Code C. P., sec. 1938; Phil. Code C. P., secs. 284, 322; P. R. Ev. Act, sec. 85.)

SEC. 107. *Inspection.*—Either party may inspect any document shown to a witness by the other. (31 U. S. Stats. at Large, ch. 766, sec. 672; Cal. Code C. P., sec. 2054; Phil. Code C. P., sec. 345; cf. P. R. Ev. Act, sec. 86.)

C. REAL, OBJECT OR DEMONSTRATIVE EVIDENCE.

SEC. 108. *General Rule.*—The court may, in its discretion, examine any object, or inspect any locality connected with the subject of litigation or affording a basis for a legitimate judicial

[1] "There is properly no preference for a *certified* or office copy over a *sworn* or examined copy." II Wigmore, Ev., 1551.

conclusion regarding the same. In criminal cases such inspection must take place in the presence of the accused and his counsel. (Cal. Code C. P., sec. 1954; Phil. Code C. P., sec. 332; P. R. Ev. Act, sec. 95; cf. other statutes abstracted in I Wigmore, Ev., 1163, n. 7.)

SEC. 109. *Reopening Trial: Newly Discovered Evidence.*—A cause may be reopened for newly discovered evidence, material to the applicant, which he could not, with reasonable diligence, have procured in time for the trial. (31 U. S. Stats. at Large, ch. 786, sec. 226 (4); Cal. Code C. P., sec. 657; Phil. Code C. P., sec. 145 (2); Phil. G. O. 58, sec. 42; P. R. Code Crim. Proc. 303 (7).)

JURISPRUDENCE.

IN THE UNITED STATES COURT FOR CHINA.

The United States on the Relation of Frank J. Raven, et al. Relators,	Cause No. 586
Paul McRae, Acting Clerk of the United States Court for China, Respondent,	DECISION

Syllabus

1. Laws of the United States extended to China by the Act of Congress of 1860 can be withdrawn only by a similar act.

2. Congress cannot constitutionally delegate to a territorial legislature the power to withdraw acts thus extended.

3. The Corporation Act of Congress of March 2, 1903, appears to be suitable to conditions in China and necessary to execute the treaties, and is consequently extended here by the general act of 1860.

4. The requirement in said Act of 1903 that proposed Articles of Incorporation be filed "in the office of the Secretary of the district" is sufficiently complied with here by filing them with the Legation.

5. The further requirement therein that said articles be filed in the office of the clerk of the district court is met by filing them with the clerk of this court.

6. But said clerk is required to record only such articles as are properly filed and only articles which comply with the law are entitled to be filed.

7. Proposed articles of incorporation examined and found insufficient to meet the requirements of said Act of 1903.

8. The clerk cannot be compelled by *mandamus* to file or record insufficient articles.

MESSRS. FLEMING & DAVIES, by MR. FLEMING, for relators.
EARL B. ROSE, ESQ., for respondent.

Original application for *Mandamus*.

LOBINGIER, J.

This is an application for a writ of *mandamus* to compel the acting clerk of this court to file and record certain articles of a proposed corporation "to carry on the business of banking in all its branches" and for the various other objects therein declared. The articles are tendered under the Act of Congress [1] of March 2, 1903, and the respondent alleges that this is not now in force and effect within the jurisdiction of the United States Court for China. It is conceded that said act was once in force here but it is contended that because Congress, about a decade later, in organizing the territory of Alaska provided that

"all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature," [2]

and because said legislature did enact a new corporation law effective January 2, 1914, the Act of March 2, 1903, thereby ceased to be operative in China.

We have not at hand an official copy of the territorial statute just mentioned and the copy furnished [3] fails to disclose a repealing clause. For aught that appears the said statute may be merely cumulative to the Act of Congress of 1903 just as the latter was itself cumulative to the corporation laws of Oregon, which had previously been extended to Alaska and which, it was held,[4] continued in force despite the corporate legislation of Congress above referred to.

But, assuming that the legislature of Alaska did attempt to repeal the Act of Congress of March 2, 1903, we are of the opinion that such attempt was ineffectual so far as this jurisdiction is concerned. For in the first place the Federal Constitution [5]

[1] 32 U. S. Stats. at Large, ch. 978, sec. 947.
[2] Act of August 24, 1912, 37 U. S. Stats. at Large, pr. I, ch. 387, sec. 3.
[3] Synopsis of Laws (1916), 20-22.
[4] Alaska Gold Mining Co. *vs.* Ebner, 2 Alaska 611.
[5] Art. I, sec. 1.

provides that "all legislative powers herein granted shall be vested in a Congress," and the courts hold that power so vested cannot be delegated to another body.[6] This attempt to confer on a territorial legislature the power to repeal acts of Congress is a recent departure, never having been made, so far as we are able to ascertain, except in this organic act of Alaska and in the more recent statute extending local self-government to the Philippines.[7] It is a departure which has not yet been supported by any judicial decision which we have found, while it is contrary to the doctrine noted above and supported by numerous authorities.

But even were it permissible to delegate to a territorial legislature the power to repeal acts of Congress for the former's own territory this would not afford a precedent for the contention here made. For if respondent's position as to this point were correct we would have the strange anomaly of Congress delegating to a territorial legislature the power not only to repeal congressional enactments operative in its own territory, but also to legislate for residents of a distant region like China. This would amount to a legal and political monstrosity.

Nor is this case where a law was passed with a provision that it should remain in force for a limited period only. The Act of Congress of March 3, 1903, contains no such provision; its duration was as unlimited as any other law. It is true that another act, passed nearly a decade later, provided that all such laws were to "continue in full force and effect until altered, amended, or repealed by Congress or by the legislature." But this was not a repeal nor does it expressly authorize the legislature to repeal and it would not become effective even as a limitation without a delegation of legislative power, which as we have seen, is contrary to elementary principles.

The practice of extending over one jurisdiction laws originally passed for another is not new in American jurisprudence. It was often resorted to during the formative period of western America when new territories were created. Thus the laws of

[6] Am. and Eng. Encyc. of Law (2d ed.) VI, 1028; Cyc. VIII, 830 note 87, and cases there cited.

[7] Act of August 29, 1916, U. S. Stats. at Large (1915-1916), ch. 416, secs. 6, 7, p. 547.

Iowa were extended over the newly formed territory of Nebraska in 1855, while a generation later the Nebraska laws were extended over Oklahoma organized in 1889. Meanwhile, in 1884, the laws of Oregon had, as we have seen, been extended over Alaska. These are but a few of many similar instances.

Congress had applied the same principles as early as 1825 when it extended the criminal laws of each state over all federal territory and property within its boundaries,[8] thus making a violation of such state law "an offense against the United States."[9] Congress was merely following precedent, therefore, in enacting, as it did in 1860, that

"the laws of the United States . . . . are hereby, so far as is necessary to execute such treaties, respectively, extended over all citizens of the United States in the said countries (including China). . . . so far as such laws are suitable to carry the said treaties into effect."[10]

The result of a well-known decision[11] of the Court of Appeals is to construe the phrase "laws of the United States" as here used, to include any appropriate act of Congress without regard to the locality to which it was originally intended to apply. But the doctrine does not rest on that decision only for the Federal Supreme Court has later held[12] that the equivalent phrase, "statute of the United States" as used in a general law, includes a local act of Congress limited in its term to the Philippines.

In making such extensions Congress has expressly adopted the principle that an extension by it precludes abrogation by any other body. Thus in extending over federal territory the laws of a particular state it was provided, as early as 1866, that "no subsequent repeal of such state law shall affect any prosecution for such offense in any court of the United States."[13]

A similar provision was embodied in an Act of 1898.[14] Nor would such express provisions appear necessary. On principle

[8] 4 U. S. Stats. at Large, ch. LXV, sec. 3.

[9] Biddle *vs.* U. S., 156 Fed. 759, 763.

[10] 12 U. S. Stats. at Large, ch. LXXIX, sec. 4, U. S. Rev. Stats., sec. 4086.

[11] Biddle *vs.* U. S., 156 Fed. 759.

[12] Gsell *vs.* Insular Collector, 239 U. S. 93.

[13] 14 U. S. Rev. Stats. at Large, ch. 24, sec. 2; U. S. Rev. Stats., sec. 5391.

[14] 30 U. S. Stats. at Large, ch. 576, p. 717.

it would seem that since Congress alone may extend laws to China, it alone may withdraw them when so extended and that an act of a territorial legislature could have no effect on such laws.

II.

It is conceded, as we have seen, that the corporation Act of Congress of March 2, 1903, was extended to China. But the questions involved are too important to rest upon a mere concession and we shall therefore inquire whether said act meets the requirements of the extending statute above quoted—whether in other words, it is one of the laws "necessary to execute the treaties" and "suitable to carry them into effect."

Now one of the primary objects of the treaties was the promotion of commerce. That can hardly be accomplished in these days without corporations, and a law authorizing their formation would seem to be one of the laws "necessary to execute the treaties."

Moreover this Act of March 2, 1903, is not only the latest expression of Congress on the subject of incorporation, but it seems to us the most suitable. The legislation on that subject enacted for the District of Columbia is not only much older, but seems to be confined mainly to special classes of corporations. The act in question, however, appears to be an up to date general incorporation law. Neither the argument of this case nor a careful scrutiny of the act itself has brought to light any feature of it which is unsuitable to conditions in China. It requires, it is true, a copy of the articles of incorporation to be filed "in the office of the secretary of the district" [15] but in the case of extended legislation such provisions are to be construed not literally but as meaning the corresponding office, which in China would seem to be the Legation. Thus in applying the Oregon statute which required filing with the county clerk, the United States District Court for Alaska held that it would be sufficient to file with a similar official.

"Here, then, was the officer corresponding to the county clerk, with whom the other certificate might be filed. We are of the opinion, however, that a filing of the second certificate with the

[15] Act of March 2, 1903, sec. 2.

clerk of the court would have met the requirement, for it is well settled that the intention of the legislature should not be defeated by a strict construction of the statute . . . . The intention of Congress is gathered, and by following out this obvious intention the persons desiring to incorporate, while not filing with an actual secretary of state and an actual county clerk, are substantially complying with the law when they file with the surveyor general and the clerk of the court for the division in which they intend to carry on the business." [16]

The chief copy, however, is required to be filed "in the office of the clerk of the district court" [17] and to that designation the clerk of this court well corresponds. The incorporation is thus effected by an officer of the court and the concern placed under its observation from the start. Each year the corporation must file with said clerk a list of its officers and notice of any changes therein must likewise be filed.[18] The opportunities for official supervision are, therefore, much greater than in the case of corporations formed, as many have been, under the laws of some distant state, to do business in China where no official inspection on the ground is possible.

Moreover, the conditions both preliminary to, and after, incorporation are strict. The articles are required to state full particulars,[19] all stock must be paid for "at its true money value" [20] and "every stockholder shall be personally liable to the creditors of the company for the amount that remains unpaid upon the par value of his stock." [21] Again the act provides

"That it shall not be lawful for the directors to make any dividend in new or additional stock, or to make any dividend, except from the net profits arising from the business of the corporation, or to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the corporation, or to reduce the capital stock of the corporation unless in the manner prescribed in this chapter or in the articles or amended articles of incorporation or by-laws; and in case of any violation of the provisions of this section the directors under whose administration the same may have happened, except those

[16] Alaska Gold Mining Co. *vs.* Ebner, 2 Alaska 611, 614, 616.
[17] Act of March 2, 1903, sec. 2.
[18] *Id.*, sec. 20.
[19] *Id.*, sec. 2.
[20] *Id.*, sec. 14.
[21] *Id.*

who may have caused their dissent therefrom to be entered at large on the minutes of the board of directors at the time, or were not present when the same did happen, shall, in their individual or private capacities, be jointly and severally liable to the corporation and the creditors thereof, in event of its dissolution, to the full amount so divided or reduced or paid out." [22]

The corporation must "keep correct and complete books" which must "at all reasonable times, be open to the inspection of stockholders" [23] and every year the principal officers must prepare and publish for three successive weeks in a newspaper of general circulation in the jurisdiction a sworn statement showing:

"First, the number of shares of capital stock outstanding; second, the amount paid in on each share of stock; third, the actual paid-up capital of the corporation; fourth, the actual cash value of the property of the corporation and the character, location, and nature of the same; fifth, the debts and liabilities of the corporation, and for what the same were incurred and whether the same are secured or unsecured and the amount of each kind, and, if secured, the character and kind of security; sixth, the salaries severally paid each and every officer, manager and superintendent of the corporation during the preceding year; and, seventh, the increase or decrease, if any, of the stock, the capital, and the liabilities of the corporation during the preceding year." [24]

With the court officers ready to see that these requirements are observed the interests of both the public and the stockholders appear to be amply safe-guarded. No defect or shortcoming has been pointed out in this statute, as compared with the most advanced corporation laws,[25] and if Congress could, after long effort, be persuaded to enact another law, especially for this jurisdiction, it is not apparent wherein it would excel the present one. We are, therefore, of the opinion that the Act of March 2, 1903, is quite as "necessary" and "suitable" as the other "laws of the United States" which have been held by this and other courts to have been extended here by the general act above quoted. For there can be no half-way adoption of that doctrine; it includes all such laws or none. It cannot logically be restricted to any particular class of acts. It is just as applicable to civil laws as

[22] *Id.*, sec. 13.
[23] *Id.*, sec. 16.
[24] *Id.*, sec. 23.
[25] Cf. the new Public Utilities Act of Illinois, discussed in Illinois Law Rev., XII, 12.

to criminal; just as necessary in respect to corporations as to procedure.

III.

But the "suitability" of this Act of March 2, 1903, depends upon its requirements and applicants for incorporation thereunder must show compliance therewith so far as compliance is possible before incorporation. *Inter alia* the act requires the articles to state "the amount of capital stock of said corporation, and how the same shall be paid in."[26] The importance of this requirement becomes apparent when read in connection with the following:

"No corporation shall issue any of its stock, except in consideration of money, labor, or property estimated at its true money value."[27]

The object of this is evidently to insure a *bona fide* capital at the start and to prevent incorporation with merely "watered" stock. Clearly this is a wise precaution whose observance must be strictly enforced.

Examining, in the light of this requirement, the articles here tendered we find that the applicants have stated "the amount of capital stock" but not "how the same shall be paid in." It does not appear whether the stock has been issued (and hence the capital created) "in consideration of money, labor or property" of something else, nor whether, if the consideration is other than money, it is "estimated at its true money value."

Moreover, the articles fail to show whether the capital stock is to be paid in before incorporation or after.

Again the act provides that corporations organized thereunder "shall have the right to acquire and hold only such real estate as may be necessary to carry on their corporate business."[28]

We are disposed to agree with respondent's counsel that this provision is infringed by the recital, in the articles, of the proposed corporation of an intention

"To take, own, hold, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of real property wherever situated."

[26] *Id.*, sec. 2.
[27] *Id.*, sec. 14.
[28] *Id.*, sec. 5.

Now the clerk is required to record articles only after they have been filed and the only articles which are entitled to be filed are those which contain the particulars prescribed by the statute. Doubtless the act of filing is a ministerial rather than a judicial one, but the law seems to be well settled that the recording officer cannot be compelled by *mandamus* to accept for filing, papers which, on their face fail to comply with the statute.[29] And since the recording of the articles perfects the corporate existence which can then be questioned only in a direct proceeding[30] it seems to be not only the right but the duty of the officer to see that such existence does not commence until the conditions prescribed by the law have been fulfilled. In providing for incorporation through the machinery of the court, and imposing the responsibility upon its officers, the act which we are now applying seems to have been intended to prevent the evils of loose and reckless incorporation by making possible in advance a careful scrutiny and strict exaction of all prescribed conditions. This offers opportunities of supervision which would be lost if the recording officer were treated as a mere automaton, obliged to accept any corporate papers which might be presented.

Having reached a conclusion which disposes of the case before us we find it unnecessary to prolong this opinion by entering upon a consideration of the other question discussed in argument, viz., whether, under the law which we have found to be in force here, banking corporations may be organized. Since a determination of that question is not necessary in order to decide the pending cause whatever we might say thereon would be *obiter dicta* and we prefer to discuss it only when the necessity for adjudication arises.

For the reason that the proposed articles of incorporation do not, in our judgment, comply with the statute, the writ of *mandamus* is denied.

C. S. L.

[29] State *vs.* M'Grath, 92 Mo. 355, 5 S. W. 29; Woodbury *vs.* McClurg, 78 Miss. 831, 29 S. W. 514; People *vs.* Nelson, 3 Lans. (N. Y.) 394.

[30] Lord *vs.* Bldg. Assn., 37 Md. 320, 327; Cochran *vs.* Arnold, 58 Pa. St. 399.

Commercial Law in China.

The following notes on Chinese commercial law are based upon an address before the San Francisco Foreign Trade Club, delivered on February 20, 1918, by Frank E. Hinckley, Secretary of the China Commerce Bank of California:

A commercial code was adopted by China in 1907. The code had been made over from a Japanese code which had been based upon the excellent German commercial code. This double making-over process, the worse for use of many terms difficult or impossible of understanding although written in Chinese character, brought little improvement, if any, to the very small body of Chinese commercial law then existing and bearing authority of the Central Government. Chinese commercial law has never been national law. It has mostly been customary and has therefore varied according to the customs of the principal mercantile cities. For written record of the commercial law of China we have to look mainly to the rules of trade adopted by the guilds. These guilds, at least the mercantile guilds, resemble our chambers of commerce, but they have a more positive and wider control over business transactions of their members than our chambers of commerce appear to have. But with the nationalizing tendencies in China a number of new acts have been adopted or are under consideration by the Chinese Parliament for co-ordinating methods of commerce and to enable capitalization upon a far greater scale and for control of business over far wider areas than heretofore.

The American merchant residing in China comes to know commercial practice there by experience rather than by reference to any books of authority. He finds that American law has a restricted field of operation, owing to want of legislation by Congress and owing to the facility with which American business can be adapted to the very excellent precedents of British commercial law. The American merchant will also have to do considerably with Japanese commercial law, the principles of which he will find well set forth in translations of the excellent Japanese commercial code. Similarly, if he has business in northern China, he will need to know at least the main features of the Russian commercial code which, I believe, was derived from the Code Napoleon, with adaptations from British mer-

cantile precedents. Commercial law in China as it affects Americans is, therefore, not only of the American system, but also of the distinct systems of the Chinese—which is mostly customary and provincial—and of the British, Japanese and Russians.

The predominance of British commercial law is noteworthy. As effecting foreign trade it is undoubtedly the most important law to have in mind. It strongly influences or controls the law of companies or corporations, the law of commercial and exchange banks, the law of insurance, especially marine insurance and the law of shipping and maritime enterprises. The British China Companies Order in Council of 1915 in general replaces as to China the Hongkong Ordinance of 1911, and it puts into effect in China, with adaptations, the Companies Statutes enacted by Parliament and prevailing in England. Although the dates given are recent, the use of the Hongkong Companies Ordinances has been of long standing, and much American business in China has been organized under the Hongkong administration. But for this British legislation and its broad and liberal aid extended to foreigners, company organization, at least American, would still be in a very loose and unperfected condition, owing to the want of adequate legislation by our National Government. It is the practice of the larger American companies, however, to conduct their business in China as branches or agencies of their organizations in the states at home. These larger companies make a record in the Consulate at Shanghai or other place of their principal business in China, showing fully their corporate organization and conforming to the legal requirements in the states of their origin. The larger American corporations in China have in all cases, I believe, conducted their business with as strict accountability, self-imposed, as though they had been operating in the United States. As to British banks, it is necessary only to mention the Hongkong and Shanghai Banking Corporation and the Chartered Bank of India, Australasia and China, to suggest the leadership of British banks in the China commerce.

In fact, these great banks, with their numerous branches and agencies and their admirable management, have an influence in commercial circles that is unrivalled. The business of foreign banks in China arises almost altogether from foreign trade and especially form foreign exchange. The functions of the banks

embrace more of a consultatory and in a degree mediating activity than they do in the United States. Almost no commercial transaction of consequence takes place without having direct references to the rules and practices of the banks and in many cases after taking counsel with the bankers. The Association of Foreign Banks in Shanghai includes all foreign banks, but the British banks, with American banks in close association, have principal responsibility and authority.

In marine insurance in China American companies, I believe, have no direct part. There are two strong British companies, the Yangtze Insurance Company and the North China Insurance Company, both, I believe, originating in China. The American fire insurance companies are also not in the China field. The American life insurance companies were as active as elsewhere some years ago; at present, life insurance companies local to China, with headquarters at Shanghai and controlled by British and Chinese capital, are very aggressive and highly profitable. A group of Americans, originally organized as a British company—the Shanghai Life Insurance Company—have built up an enormous and extremely profitable business.

In shipping, the large place formerly had by America has now been taken by Japan and China itself. The Pacific Mail Steamship Company, which was created for the trade from San Francisco to Hongkong and which is now, I am told, the oldest of the greater steamship companies on either the Atlantic or the Pacific, has truly been the most important and most constant commercial bond between China and America. An old American house, Russell & Company, sold out their coast and river business to Chinese capitalists who established and have done very well with the China Merchants Steamship Company. The Japanese shipping on the China Coast and the Yangtze River is very prominent. Yet it is the British commercial law as to shipping that has given character to the law of shipping in the China trade both local and transoceanic.

The British have the leading place also in the Chinese maritime customs. This first place is secured to them under an agreement between the British and Chinese governments, acquiesced in by other powers, which provides that so long as British trade is 50 per cent or more of the foreign trade with

China, the chief office of the customs, that of inspector-general, so many years held by Sir Robert Hart, shall be bestowed upon a British subject. The British also have a larger proportion of men in the customs' service. There is in China an export as well as an import tariff, and there is an interior transit tax and a likin or local transit tax. In administration of all these tariffs and taxes, except the last, British methods and men are at the forefront.

The establishing of commercial law in China on the basis of the foreign national systems is made by treaties and legislation peculiar to the China situation. Under treaties with the principal powers, the citizens or subjects of those powers are exempt from the jurisdiction of Chinese courts and the enforcements of Chinese laws and are relegated to their own laws and courts. This is the system of extraterritoriality and the courts of most powers are consular courts. In 1867 the British separated the jurisdiction from the other functions of British consuls and founded what is called a supreme court for China, to which British subjects are amenable in all matters of litigation. In 1906 the United States created a similar higher court for American citizens. In 1917 the French appointed a separate judicial officer for China. The Germans had done so several years before. The Japanese require that all but lesser cases be taken before the courts in Japan. Each of these courts enforces the law of its own jurisdiction, but inevitably the conditions and customs prevailing in commerce local to China are gradually being adjudicated upon by these foreign courts and in general they are tending toward unanimity.

Chinese courts have been principally occupied with criminal matters. Foreigners in commerce have little to do with the Chinese courts except in the trading centers along the coast and on the Yangtze River. Foreign merchants at Shangai have a great interest in the so-called Chinese mixed court, where the Chinese residing in the international settlement are sued as defendants and where a Chinese magistrate, usually of lesser rank, is aided by a consular interpreter who appears for the consul of the nationality of the plaintiff.

The purely Chinese courts, in which no foreign interpreter appears with authority of any considerable degree, are occasionally

invoked in aid of foreign plaintiffs at Shanghai, Tientsin, Hankow and Canton. But usually difficulties with Chinese are left to the friendly settlement of the consul of the plaintiff in conference with the Chinese officials. The adjudications in the Chinese courts above-mentioned have tended to establish a few principles of commercial law. For example, the principle of *caveat emptor* has been narrowed in China to requiring goods only to conform to sample; and the Statute of Frauds in commercial law of China now means that besides having a written contract, there must be a payment of bargain money; and the courts have considerably elucidated the multiform arrangements which the Chinese call partnerships and have to a degree brought them into condition of registered companies.

Of Chinese commercial law as a whole it is really true to the fact to say that as a national law or as any uniform system of customs it does not exist. No effort has been made by any of the writers upon Chinese institutions to bring together in any comprehensible general form the many customs that pertain to various markets and to various lines of commercial activity. The foreign merchant learns through his Chinese compradore what the local customs are. The compradore is ordinarily a member of some or other guild or mercantile association through which he keeps himself informed of current practice. The mercantile guilds are mostly guilds of men originating in any given province, such as the Canton Guild, the Ningpo Guild or the like; or they may be guilds having to do with the trade in tea, silk, rice, lumber or other goods. A reference to the records of these guilds will show the commercial practice as clearly and fully as it may anywhere be had, and the decisions of the guilds have essentially the force of law.

It will be remembered that the first dealings of foreign merchants in China were at Canton and that the trade was supervised by a so-called cohong, which was a form of officially recognized guild. This system was in vogue from 1720 to 1842. At the same time that there was an opposition in England to the East India Company, there was a similar opposition in China and on the part of foreign traders in China to the cohong or guild system. It was plain as to China that the cohong was an inexorable monopoly and extremely corrupt. The French Government

even stipulated by treaties with China that the guild system should be suppressed. But the guilds, which include both mercantile associations and trades unions, appear to have existed in China for many centuries. They are today a very useful form of organization. To illustrate their character I have turned to the translation of some of their by-laws and rules. One of the old guilds, I believe a Ningpo Guild, had some provisions as follows: "It is agreed that members having controversies about money matters with each other shall submit them to arbitration at a meeting of the guild, when the utmost will be done to bring the parties to a satisfactory settlement of their difficulties. If this is impossible, appeal may be made to the authorities; but if the complainant has recourse to the official direct, without first referring to the guild, he shall be subjected to a public reprimand and any future case he may present for the opinion of the guild will be dismissed without a hearing."

Another provision reads: "It is agreed that in selling goods the times of payment shall be in case of cereals 40 days after delivery; in case of beancake 50 days; and in case of other commodities 50 days; and infraction of this rule subjects seller and buyer alike each to a fine of the expense of a theatrical performance and two tables of wines and viands." As to storage, the seller is to warehouse goods free of charge for 70 days, but if not removed on or before the 71st day, one month's storage is to be charged. Standard weights and measures are kept for members and members are heavily penalized for allowing variations. It is agreed that no business shall be transacted before the middle of the first month of the year. Fictitious buying and selling is absolutely forbidden. Charity is to be extended to members, principally in the way of aiding their families, in case of death of the principal member of the family, to return to their home in their native province. The Shanghai Bankers Guild has an archaic preamble to their by-laws which informs us that "inquiry discloses that the ways of commercial wealth have been transmitted by the sages and that more fruit must be grown than is eaten"—which are ways of monition to the merchant to follow the teaching of the ancestors and to increase profits. Some of the good sentiments from the classics are also included, like, "The root is in virtue, the fruit is wealth." "To be a good

merchant wear a smiling face." This bankers guild permits the charging of one-half tael for every 1000 taels cashed on paper coming from the provinces. Interest on unemployed deposits in the banks is declared from month to month on the fifth day of the month by the guild, and the rate varies for each month. In examining currency, especially foreign dollars, it is a rule that those dollars are to be excluded which are "light, dull colored, flowery spotted, dull sounding, copper alloyed, of unsound edges, chopped with three stars, having circles on the reverse, having the head of the figure upside down, having a yellowish hue, being too white or having too fine edges." In 1893, the Tea Guild at Hankow established a boycott which obligated foreign merchants to standardize their weights and permit a single foreign inspector to act on behalf of the Chinese for inspection of weights. At Shanghai in recent years the prices of cotton piece goods have been wholly controlled and dictated from day to day by the Chinese guilds.

These illustrations will suggest the wide ramifications and the force of the rules of the Chinese guilds in fixing commercial law and practice in China.

The new legislation of the nature of commercial law in China cannot be said to have much prospect of success until the commercial interests of the country at large are far more unified than at present. The commercial code promulgated by Imperial decree has remained dormant. Occasional legislation on specific subjects like banking, insurance and shipping has more prospect of being generally observed. The terms on which railway, mining, canal improvement and similar concessions granted to foreigners are made tend to include confirmations of existing commercial practices or to introduce some form of commercial law to which foreigners have become accustomed in their own country. But on the whole China is still a fresh field for effort to bring together the principles of commercial law suitable to Chinese commerce and standardized by scientific legislation.

The times and conditions in China are very favorable for increase of American influence in establishing Chinese commercial law. The disposition of the Chinese toward American merchants is pleasant, and the mutual respect of American and Chinese merchants is a factor of importance. Recent American enter-

prise in China, especially of the better class, appears to realize the importance of British precedents in much the way the Chinese realize their importance, but the Americans have an advantage in coming freshly into a place of commercial leadership. Two or three of the principal American concerns in China have given us all an influence which we will do well to perpetuate. We come also at a time when the interior of China is being generally opened to trade and when dealing directly with the Chinese in the interior, rather than through agencies at the seaports, has become possible through the telegraphs, postoffices, railways and steamer transportation. For a few years past it has been a notable feature of foreign commercial life in China that the younger men of the foreign staffs have been encouraged by their companies to obtain a practical knowledge of the Chinese language, of Chinese geography, characteristics and customs. There is also a wide movement among foreign business houses to take into their services well-connected and well-educated young Chinese. The American consular service in China, I will say after some 20 years of careful study and personal observation, has come to be in system and personnel an admirable and proficient service. The American people have responded most charitably at times of distress by flood or otherwise among the people of China; and American missions, schools and medical establishments are the most numerous and the best in results, I believe. There has thus been laid a foundation for well-ordered, or we may say, scientific business advance for American merchants into all this great and rich land of China.

JAPAN.

Legislation, 1917.

Law No. 20, July 21, 1917, authorizes the Imperial Government to re-insure any marine insurance company as to risks already taken on ships and their cargoes. To become eligible for reinsurance under the present act, liability should be limited to: (1) Ships registered in Japan; (2) cargoes being exported from Japan or imported to Japan from a foreign state; (3) goods destined for exportation and being intransit on the railroad or on the coastwise trade are considered exported.

It is further declared that no liability shall be re-insured which was insured for a premium higher than the rates fixed and published from time to time by the Board of Insurance Commissioners duly authorized by the Imperial Government.

If applications made to the government are valid in all respects, re-insurance shall be assumed to take effect at 12 P. M. on the day of application.

Fraudulent statement as to the date of application or as to ownership of vessels and cargoes is punishable by a fine of not less than 500 yen nor more than 5000 yen for each offense.

Law No. 21, July 21, provides for the war-time patent regulation. The law consists of four parts, the objects of which are to confiscate property rights of alien enemies. The following rules are enacted: (1) No application for patent by an alien enemy or by a citizen in favor of any alien enemy shall be accepted; (2) no suit contesting a patent right or dispute arising from the existing right thereof by an alien enemy shall be entertained; (3) where a suit concerning a patent is brought by a citizen or person other than an alien enemy, if it incidentally gives benefit to an alien enemy, it shall be dismissed; (4) if a patent is issued to an alien enemy prior to the declaration of war, and if it concerns military or naval science, it may be revoked.

Law No. 24, July 21, is the amendment to the prior laws providing for the creation of the Growers' and Workers' Bank. The amendment declares that a fourth part of the entire deposit shall be invested either in government bonds or in bonds issued by corporations approved by the Secretary of the Treasury. Where a cash deposit is preferred, the deposit shall be made in the Government Treasury or in banks approved by the Secretary of the Treasury.

The amendment also provides that no money shall be loaned except short time advances, usually 30 days, on bills and notes or special agreements, secured by chattel mortgage on land or sea products and manufactured goods.

Jurisprudence, 1917.

A number of important cases have undoubtedly been decided by the Japanese courts during 1917, but owing to the lack of a reporter system judgments cannot be easily found. A few unauthorized reports are kept by local practitioners in Japan.

DECISIONS BY THE SUPREME JUDICIAL COURTS.

1. *What Constitutes a Criminal Offense.*—X. was indicted on a charge of publishing an indecent picture for commercial purposes. The defense interposed was that the general appearance of the picture was indistinct and obscure, that its parts could not be well distinguished one from the other, and that such a picture gave no impression of lewdness or indecency.

To this defense the state objected on the ground that the alleged obscurity or indefiniteness in the appearance of the picture was the very thing which constituted a criminal offense because of its suggestiveness. The Supreme Court decided that to constitute a criminal offense the picture must be reasonably distinct and not a product of the imagination.

2. *Creation of Rumors Is Not a Crime.*—T. was arrested and fined for creating and publishing false news with intent to defraud the public. The printed matter in question stated in substance that the United States of America had placed an embargo on cotton and raw materials, and that all the Japanese cotton industries which were heretofore dependent upon the United States would soon be forced to close.

The intent and purpose of the publication was to bring down the stock market, possibly to cause a panic.

The court was of the opinion that rumors current in the stock market are always false or much exaggerated, and that those who act upon such news reap the fruit of their own heedlessness.

3. *Extraterritorial Force of Laws of Divorce.*—B., a European merchant, brought an action against Mrs. B., his wife, for an absolute divorce. The ground of action was based upon the Civil Code, sec. 866, which provides that the District Courts shall have the power to grant divorces on the following grounds: (1) Cruelty; (2) desertion by wife; (3) malicious alienation of affection by the parents; (4) imprisonment of other party for over one year; (5) spendthriftness ending in bankruptcy; (6) missing for more than three years.

The petition was denied on the ground that the court had no authority to grant to an alien a divorce under the Civil Code, sec. 866.

The law applies to every citizen without exception, and the court referred to the Constitution, sec. 16, which reads:

"All actions for divorce by aliens shall be governed according to the laws of the state to which the husband owes allegiance, provided such causes of action is not contrary to the laws of Japan."

J. G. K.

PHILIPPINES.

Value and Force of "Las Siete Partidas."[1]

There are it seems to me, several reasons for publishing the *Partidas,* earlier than any other work. In the first place, one of the results of the work of this bureau will be to bring the American lawyer more into contact with the Spanish law of Central and South America. I suppose that is one of the purposes; at least, it is a very practical and appropriate purpose. Our commercial relations with South America are bound to grow. The lawyer whose practice extends very far is going to encounter the need of a greater and more accurate acquaintance with Spanish law which, as a whole, has never been codified. It was not codified in Spain itself until very late in the 19th century, and it is a remarkable fact that our contact with the Spanish law, in the Philippines, came only nine years after the Spanish Civil Code had been promulgated.

Nevertheless there is a written basis for the Spanish law. It does not, like the English common law, rest solely upon precedent. That written basis is very ancient, very authoritative, universally cited, and highly respected by the courts of the Spanish-speaking countries, regardless of what codes they may have since evolved. I refer to *Las Siete Partidas,* a work produced originally in the 13th century, though not then coming immediately into force. It has the great historic value of marking the "reception"—to use a technical term—of the Roman law in Spain. It was through the *Partidas,* and through the introduction, in great part, of the Justinian codes in the form of the *Partidas,* that the Roman law came to Spain. Of course also Spain, with her great colonial enterprises, extending her civilization, language, culture and institutions over practically all of South America, a large part of North America, and no inconsiderable portion of Asia, diffused

[1] From remarks by Judge Lobingier in discussing the Proposed Program of Publications at the Last Meeting of the Comparative Law Bureau.

the Spanish law, and with it the *Partidas.* Hence the *Partidas* was the original basis of the law in Mexico, Central America, Louisiana, the Philippines, and wherever the Spaniards have gone. You will find the courts of the Spanish-speaking countries today citing the *Partidas,* on any question antedating their codes, and, naturally, there are many such.

So if it be the design of our publications to place the American lawyer in touch with the Spanish law in such a way that he will really grasp its historical development and get in touch with its sources, that must be accomplished through the publication of the *Partidas.* I think its practical value is greater than the Argentina code, *e. g.,* because that is only a local book.

It is no doubt desirable that all of these codes be published eventually—I hope they will be—but when we are limited to one or two publications, at the most, during any one year, I think we should seek the fundamental ones first, and I believe that the *Partidas* should be the initial one. There is the reason I have just discussed that it is the basis of all Spanish law.

TRANSLATION.

Then, there is the additional reason that a translation has been supplied. It is not a case where we need look for a translator, nor consider whether we have the funds to pay for translation. That burden has been eliminated. I feel justified in speaking of our translator because I received, not long since, a letter from Mr. Scott, inquiring what had become of his translation, and expressing some disappointment, which seemed to me justified, that it had not been published sooner.

Now, this is not Mr. Scott's first attempt at the translation of a great Spanish law book. He translated at least one other, I think the first one the Bureau issued—the Visigothic Code. I do not know what its circulation is or how it has been received, but I would not suppose that the circulation of the Visigothic Code would be a reliable index of the circulation of the *Partidas,* because while they are both books relating to Spanish law, they are very distinct in character, value and influence. The Visigothic Code is some six hundred years earlier than the *Partidas* and is not really a Spanish Code, but as its name implies, a Visigothic one; and it never had an influence upon the develop-

ment of Spanish jurisprudence, nor a place therein, at all comparable to those of the *Partidas.*

I have examined Mr. Scott's translation of the Visigothic Code and used it considerably, and it has always seemed to me an excellent one. It is well printed, and the Bureau has reason to be proud of having issued that book. I do not believe that any one who has used it or who is familiar with it has any regret that the Bureau has published it, and I believe that the results will be even more satisfactory if we publish the *Partidas.*

Now, as regards the commercial side, of the question—the demand for such a book. There is a growing number of students of Spanish law in English. Not many, even of those who study Spanish, are prepared to study the Spanish *law* in Spanish, and especially the *Partidas* which is composed in 13th century Spanish. To put a modern student on the original text of the *Partidas,* would be like putting him on Chaucer without a glossary. The Spanish of the *Partidas* is very antiquated, and in fact it has much that never was Spanish, but rather a transliteration from the Latin. The use of the original text for the student of even Spanish is almost out of the question. I tried that in classes which I have had in the University of the Philippines, but I found that the text that the Spanish law schools were using was not the original text of the *Partidas* at all. They were modernized versions; so that if the *Partidas* are used as a text-book, even in an historical course, there must be some kind of a translation. Why not then have it in English?

I think we will find that there will be a demand from the law schools for this English version. I believe that a very considerable demand will come from the Philippines where there are two law schools, in which instruction is given entirely in English. I see in that fact also an opportunity for this Bureau to help along the spread of English in the Philippines. At the present time, those who want to study the *Partidas* in English are unable to do so except from an old translation of part of the books made by Moreau & Carleton of Lousiana about a century ago. And the fact that those lawyers found it advisable at that time to make the translation for the Bar and legislators of Louisiana shows that the work is not solely one for the antiquarian. It is true that they omitted certain portions which they considered

not of great practical value; but they included the greater portion of the *Partidas*. Their translation, however, is out of print, and scarce, besides being incomplete; so that there is ample reason for another translation now. Indeed, as Moreau & Carleton say in their preface to the work, the study of the *Partidas* was necessary to an understanding of the jurisprudence of Louisiana. For it, while at one time French, the Spanish law had prevailed for a considerable time, and its basis, I repeat, was the *Partidas*. You will even find the United States Supreme Court, in cases coming up from Louisiana, citing and quoting the *Partidas*.

I submit that such a book has a place in American as well as Spanish law. In at least three different jurisdictions now under the American flag—Louisiana, Porto Rico and the Philippines—the *Partidas* are more than an historical work; they are an actual authority and I submit that such a book is worthy of presentation in an intelligible form to the American Bar. I believe that it will prove useful, and that it is entirely within the scope of this Bureau's work. So with that amendment, I would favor Dean Wigmore's program. I think that we should first utilize the material we have on hand, especially as it is material which offers so many opportunities of extending the Bureau's influence and usefulness.

To summarize, I believe that the *Partidas* should be published first, and after that, I see no objection to entering upon the remainder of the program, and making accessible the codes of modern civil law countries. I believe that will prove to be a very useful program and one that will make the record of the next ten years as creditable and worthy of commendation as that of the period which has just been reviewed by our Secretary.

Recent Penal Legislation.

The present legislature at its former session passed an act (2695) for the segregation of tubercular and other diseased prisoners, removing them from the central prison at Bilibid and providing for their incarceration in a prison sanitarium. An appropriation not exceeding $50,000 is included. Section 1 of the act provides as follows:

"The Secretary of Justice is hereby authorized to ascertain and secure an appropriate site for the confinement and care of

persons committed to prison who are found to be suffering from tuberculosis and other dangerous communicable diseases and for such persons as during imprisonment shall be found to have developed such diseases for which suitable provision has not otherwise been made by the government. In addition to conditions favoring the isolation, restoration to health by appropriate exercise and productive labor of such of these prisoners as are in the earlier stages of disease, and the greatest practicable economy in the maintenance of such prisoners there shall be provided in connection with this prison sanitarium the necessary and suitable land for the utilization of prison labor in production of foodstuffs for the subsistence of prisoners in the establishment hereby authorized, at Bilibid Prison and other Insular prisons."

At its present session the legislature has passed an act (2726) placing certain limitations upon the imposition of capital punishment. Section 1 reads as follows:

"The death penalty shall be imposed in all cases in which it must be imposed under existing law, except in the following:

"First. When the guilty person was less than 18 years of age at the time of the commission of the crime; and

"Second. When the vote upon the sentence in the second instance by the magistrates of the Supreme Court participating in the voting is not unanimous with regard to the propriety of the imposition of the death penalty."

C. S. L.

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